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# DEPARTMENT OF DEFENSE: THE CONSULTANT GAME

## HEARING

BEFORE THE

SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE, AND CIVIL SERVICE

OF THE

## COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES CONGRESS

SECOND SESSION

JULY 8, 1988

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# CONTENTS


Opening statements: Page
Senator Pryor ..... 1
Senator Stevens ..... 3
Senator Levin ..... 6
Senator Sasser ..... 15


## WITNESSES

FRIDAY, JULY 8, 1988


Lawrence Korb, Ph.D., Director, Center for Public Policy, Education, The Brookings Institution ..... 17
Col. James Burton, U.S. Air Force (Ret.) ..... 34
Richard Stubbing, Practices and Public Policy Studies, Department of Public Policy and Public Affairs, Duke University ..... 36
James H. Falk, of Coffey, McGovern & Noel, Ltd ..... 38
Derek J. Vander Schaaf, Deputy Inspector General, Department of Defense ..... 53
William H. Reed, Director, Defense Contract Audit Agency, Department of Defense ..... 62


### ALPHABETICAL LIST OF WITNESSES


Burton, Col. James: Testimony ..... 34
Falk, James H.:
Testimony ..... 38
Prepared statement ..... 73
Korb, Lawrence, Ph.D.: Testimony ..... 17
Reed, William H.:
Testimony ..... 62
Prepared statement ..... 100
Stubbing, Richard: Testimony ..... 36
Vander Schaaf, Derek J.:
Testimony ..... 53
Prepared statement ..... 80


## APPENDIX


Prepared statements of witnesses in order of appearance ..... 73
"DOD Consultant Spending," chart ..... 115
Chart concerning Eastport Study Group ..... 116
List of members serving on the Defense Science Board during fiscal year 1987 ..... 117
Investigative Statutory Testimonial Subpoena Authority ..... 127
"Sole-Source Procurements Resulting From Unsolicited Proposals," audit report No. 88-197, Office of the Inspector General, Department of Defense, August 25, 1988 ..... 135

# DEPARTMENT OF DEFENSE: THE CONSULTANT GAME

FRIDAY, JULY 8, 1988

U.S. SENATE,
SUBCOMMITTEE ON FEDERAL SERVICES,
POST OFFICE, AND CIVIL SERVICE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 9:35 a.m., in room SD-342, Dirksen Senate Office Building, Hon. David Pryor, Chairman of the Subcommittee, presiding.

Present: Senators Pryor, Sasser, Bingaman, Stevens, and Roth.

## OPENING STATEMENT OF SENATOR PRYOR

Senator PRYOR. The Subcommittee will come to order.

On June 13, this Subcommittee held a hearing on the Federal Government's use of consultants. At that hearing we found that, one, some $26 billion is spent each year for consulting services; two, less than half of the present Inspectors General have been monitoring consulting contracts, as mandated in 31 USC 1114; three, the Office of Management and Budget admitted to, "not doing a good job,"; four, that all agencies are under reporting the use of consultants, and few agencies even know how to define consulting services; five, that over half of all consulting contracts are sole-source with no competition, two-thirds have add-ons to increase the original contract price, while many are unsolicited by the agencies.

Today, we turn our attention to that department of government which uses more consultants than all of the rest of the government combined, the Department of Defense. At the Department of Defense we will look at two kinds of consultants: those hired by the Department of Defense and those hired by the private contractors doing business with the Department.

Well, who are these people? What services do they perform? Who hires them? Who monitors what they do? Do checks and balances exist? And finally, what influence do they exert on defense policy and weapons procurement?

Some of our witnesses today will talk about those consultants who work both sides of the street, not only for the Department of Defense but also for private industries. What about conflicts of interest here? What about the revolving door? What about advisory groups like the Defense Science Board where we assemble under one tent not only consultants but also the kingpins and the czars of

the defense industry along with retired generals and admirals? Is national security being served? Or is national security being compromised?

In May, I made inquiries to find out how much the Department of Defense was reporting that it spends on private consultants. The reply: $155 million was spent in 1987. However, the General Accounting Office says that the Department of Defense was actually spending somewhere between $2.8 billion and $18.8 billion on consultants in that particular year.

I asked the Department of Defense to send me their FY 87 consulting contracts. Here is what I received. A list of $155 million worth of consulting contracts. In this printout of the reported consulting contracts that DOD presented to this Committee, there was only one mention of BDM for a contract worth $100,000. However, in working with the General Accounting Office and the Federal Procurement Data Center, we find that not just $155 million has been expended but some $2.4 billion worth of contracts that the Department of Defense has for fiscal year 1987. I imagine we could have papered this room with these.

Let me cite the example of BDM once again, if I may. With the help of the Federal Procurement Data System, we find that BDM is not into the government till for just $100,000 but for some $228 million. BDM is one of those consultants that we will look at who, as we say, work both sides of the street.

We will also hear from recent authors who have written about this particular type of government. Some call it "the shadow government." Some refer to it as "government by contract" or the "unelected government." But I have adopted a metaphor, an analogy, I guess, as my own explanation of the way I see this vast consulting network.

Driving along Connecticut Avenue we see the grand hotels and the big buildings and the expensive shops, but beneath the street is an underground subway system, a world we seldom see, with people constantly getting off and getting on. So it is with consultants and the contracting world. Today they are with DOD, tomorrow with BDM or Lockheed, next week they are consultant for one, both, or all, sometimes at the same time.

Finally, our hearing today will attempt to look inside the DOD procurement process. We will hear from those who know that process well, those who have been a part of it and those who have challenged it. We want to know what happens in that process to those who blow the whistle. What happens to an Ernie Fitzgerald or a Chuck Spinney? How does the system reward? How does the system punish? And who is in control?

As to the current so-called "scandal," I would like to make a personal statement. Former Secretary Weinberger has recently stated: "I am not culpable." Secretary Carlucci has remarked that this is just a case of a few bad apples. Others profess surprise. The Pentagon public relations machine is working overtime to minimize, dodge, shift blame and squirm. They say that the system is great.

I would like to ask one question. I would like to ask this question to someone, anyone, in the Department of Defense. What ever happened to old fashioned outrage? I am not only outraged as a citizen, I am ashamed as a U.S. Senator for being a part of an institution

that knows the problem but has been impotent to change it. I am ashamed that we are not standing on our desk tops in the U.S. Senate and demanding some public hangings. I am ashamed of a system which brought about an uncontrolled generosity to contractors and consultants, winking at those who work both sides of the street and creating different rules for those who have profited from the Department of Defense's 8 year feeding frenzy.

And finally, I am very ashamed. I am very ashamed of the message that we send to the young sailor in the Persian Gulf on the midnight watch, the private standing guard at the DMZ or the supply officer in Europe rationing boots and ammunition while the greed and the thirst for the open money sack at the Pentagon remains unquenchable.

In our wildest dreams, there is no conceivable system of procurement we could have concocted which would have created an environment more conducive to temptation and, ultimately, corruption.[1]

Senator Stevens.

## OPENING STATEMENT OF SENATOR STEVENS

Senator STEVENS. Well, all I can say this morning is it looks like the Democratic Convention is next week.

I had no notice of this hearing, Mr. Chairman. The first time I can remember during my service on this Committee that I have not been consulted. When I was Chairman I consulted the Minority concerning hearings. And it seems to me that the air ought to be cleared. There is nothing in this hearing that pertains to the so-called scandal—and it is a scandal—concerning the corruption of consultants hired by the private sector, not by the Government, that is not being investigated by the Department of Justice.

To my knowledge anyway there is not and if there is we ought to have a little meeting behind the Committee room here right now, because having been briefed—and I think we have all been briefed—by the Department of Justice concerning the investigation, we have been warned not to jeopardize the prosecution of those who may have committed crimes and are being investigated by the Department of Justice now in connection with defense procurement.

I am concerned that this hearing, entitled "The Consultant Game," implies to some people that they are going to watch an expose of the investigation that is going on by the Department of Justice. That is not going to go on as far as I am concerned, and if necessary, we will have to find a way to terminate the hearing if it does, because the Department of Justice is entitled to investigate those allegations and the people involved are entitled to justice under our system.

Second, the implication in your comments that there is something different between the GAO investigation and the DOD investigation needs full explanation and I hope that you will give it. The GAO has a different interpretation than either DOD or OMB of

[1] Please see p. 115 for a chart used by Senator Pryor during the hearing.

what is a consultant contract. And this Committee differs from all three, and I think the Armed Services Committee differs from us.

The question of what is or is not a consultant contract needs to be settled. In particular, none of the DOD contracts that they disclosed to you, and properly so, involved computer services, as I understand it. And computer services make up a significant portion of the consultant contracts of the Department of Defense, as we all know.

There is no reason to malign distinguished public servants like Secretary Weinberger or Secretary Carlucci in an opening statement here, unless it is just because the Democratic Convention is next week, and I think this hearing better settle down because I do not intend to be a patsy and see people maligned here or see people in any way brought before the public and inferentially accused of crimes.

The difficulty that I have is that we all know that the Government consulting process, not just the Department of Defense but all of them, operate under processes that are subject to redundant controls legislated by Congress, so that the problem is how to get the job done and still comply with the law. I think that the testimony should show that the system is flawed and Congress is responsible for the flaws and the sooner we admit it the better off the country is going to be.

Now, correct me if I am wrong, but this hearing is not called to investigate the so-called procurement scandal. And second, the information that is before us now concerns Government consultants hired by the Federal Government and not consultants hired by industry that were involved in the industrial espionage that led to the current scandal that is being investigated by the Department of Defense.

Third, I think that we ought to have a reversal of the process, except for our colleague from Michigan who is entitled to testify first, and that is the Inspector General of the Department of Defense who is scheduled to testify next to last, the Defense Contract Audit Agency, who is actually last, ought to have been first and ought to have been given a chance to explain their procedures that may be subject to criticism by those outside of the Government.

That has been the tradition in this Committee as long as I can remember and that is almost 20 years. So, my comment to you is that I hope that we can find some way to clarify for the public what this hearing is and is not about. The sooner that is done, I think the better off everyone will be.

Again, I would hope that the next time we schedule a hearing of this type that there is the courtesy to notify people so we can find out who the witnesses are and determine whether other witnesses ought to be called. That has been, again, a tradition of this Committee that has not been observed this time.

Senator PRYOR. Well, this hearing has taken on a new twist that is somewhat surprising to me. One, I am informed by our staff that first notices concerning this hearing went to all members of the Government Affairs Committee on June 28. The second notice went out on June 30, putting the members on notice that there was a change in the date. This meeting was originally scheduled for this past Wednesday and we changed the meeting to Friday.

Also, a memo went to the members of the Committee on July 5 relative to this hearing and was distributed to all members of the Subcommittee staff.

Senator STEVENS. June 30 we were in recess and July 5 we were still in recess.

Senator PRYOR. Well, the mail still runs, I think, Senator Stevens, in all due respect.

Senator STEVENS. You better find some way to get instantaneous delivery to Alaska then next time.

Senator PRYOR. I have a receipt here, which shows that a notice of this hearing was received and signed for by a member of your staff—I am sorry I cannot read their name—received at 6:30 in the afternoon of June 30.

Now, one, in my opening statement I never mentioned Democrat or Republican one time. Two, I am castigating no individual and I want everyone to know that. Three, if I quoted Secretary Weinberger, it was only his remark made on the Brinkley show of Sunday, one week ago.

Senator Stevens has brought up maligning individuals. I am not maligning any individual. I am maligning a system. I am maligning a system that has broken down. I am maligning a system in which, to the best of my knowledge, there are no controls.

This hearing, yes, is about consultants and the impact they have on the weapons procurement process and also, ultimately, on our defense policy. It is about the potential for conflicts of interest. It is not about accusing individuals who are involved in the so-called Pentagon scandal. It is about the use of our Federal dollars. Historically—and Senator Stevens knows this as well as any member of this Committee or this Senate—this Committee is an oversight Committee, and frankly, I do not think we have done a good job.

I admit to him and I admit to the world that I am ashamed of the job we have done in oversight and maybe the Armed Services Committee will look at this someday. Maybe the Appropriations Committee will look at this someday. But until they do I think it is our responsibility and our obligation to begin looking at the creation of a process which I think is broken down and is breeding corruption and also is very quickly losing credibility with the American people.

Finally, Senator Stevens keeps talking about those consultants who work for the private contractor and saying that none of the DOD consultants are under investigation. I have not been informed who is under investigation. All I would like to say is that many of these people who work for the private contractors also work for the Department of Defense and draw taxpayers' dollars.

For example, let's look at BDM. Let's look at the BDM Corporation that has $228 million worth of federal contracts. It has not been brought out that BDM also works for the Egyptian Air Force, the Egyptian Ministry of Defense, the Royal Saudi Air Force, and Japan.

Look at their 1987 annual report. They stated, not me, "The company is seeking to develop other markets, including foreign military and commercial markets."

So BDM is only one of those companies not only working both sides of the street but both sides of the world. And there are many,

many companies like it. I am tired of it, and I think that we ought to look at it.

Senator Levin, we are glad to have you here today.

## TESTIMONY OF HON. CARL LEVIN, U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator LEVIN. Mr. Chairman, thank you. Elise Bean of my Subcommittee staff is also joining me today.

Senator PRYOR. Was she notified of the hearing?

Senator LEVIN. Yes, she was.

Mr. Chairman, you have requested that I discuss one category of DOD consultants that I and my Subcommittee have spent some time examining over the past year, and that is the consultants that participate on the DOD advisory committees.

The Government currently has about 1,000 chartered advisory committees. Of that number, the DOD has about 60. In addition, the DOD has a number of advisory committees that have functioned outside of the law that governs them, the so-called Federal Advisory Committee Act or FACA. Individuals who serve on DOD advisory committees, both chartered and unchartered, are a type of consultant to the DOD. When these individuals serve at the same time as consultants to defense contractors, that is where problems can and do arise.

There are two key sets of rules, already on the books, which address or seek to prevent some of the problems that can arise when members of the DOD advisory committees also serve the DOD contracting community, and provide advice to DOD on matters of financial interest to themselves, their clients or their employers.

The first set of rules is DOD's Standards of Conduct, set forth in DOD Directive 5500.7. These rules require advisory committee members to file financial disclosure statements identifying their financial relationships and interests and to comply with certain conflicts of interest rules. When an issue comes before an advisory committee involving the financial interest of a member, that member is expected, under DOD's standards of conduct to recuse himself or hereself from that discussion.

Now, there is a second set of rules that apply, and that is the Federal Advisory Committee Act, or FACA, rules which impose certain management and fiscal controls over Federal advisory committes, for instance, calling for open meetings and for minutes being taken and being made available to the public. When properly followed, the conflict of interest and sunshine provisions which apply to the DOD advisory committees go a long way towards protecting the Government from any double-dealing by a consultant.

The problem is that when the Governmental Affairs Subcommittee looked into this subject we found that many DOD advisory committees are not being chartered under FACA as they should be and that the DOD financial disclosure and conflict of interest procedures are not being followed or monitored. In those cases, that means that we are not being protected from opportunist consultants.

One DOD advisory group that we looked at in detail is the Eastport Group, and that demonstrates the DOD's lack of compliance

with the current rules and the problems which can result. By the way, the Eastport Group was not the only problematic advisory committee that we found. It is part of a pattern at DOD of lax treatment of advisory committees associated with the Strategic Defense Initiative Organization, a pattern which we documented at a hearing which we held in April.

The Eastport Group is an advisory committee that was established by the DOD in 1985 to advise the Strategic Defense Initiative Organization, or SDIO, on matters related to computers and battle management technology. It was not properly established under FACA and among other improper actions, circumvented FACA's salary limits for advisory committee members. Moreover, none of the members filed the required financial disclosure forms. Eastport's chairman was Dr. Danny Cohen.

In December 1985, the Eastport Group issued a report recommending that the DOD sponsor certain research related to the SDI Program. Within 2 weeks of the public release of that report, a think tank known as the Information Sciences Institute, or ISI, which is part of the University of Southern California, submitted an unsolicited proposal to do some of the recommended research. The person whom ISI proposed to supervise the project was their senior researcher, Danny Cohen—the same Dr. Cohen who headed the Eastport Group that recommended the research in the first place.

ISI's unsolicited proposal, coming 2 weeks after the Eastport report was released, smacks of insider information. It also raises questions of self-dealing and possible conflicts of interest. The question that you have to ask is whether the Eastport recommendations were fashioned not to identify work needed by the DOD but to set the stage for a favorable response to ISI's contract proposal.

At the April hearing exploring the ISI contract actions, one leading computer scientist and a former member of the Eastport Group, Dr. David Parnas, testified that the first meeting of this group struck him as a session in which the advisory committee members were presenting personal proposals to DOD officials to carve up the SDI dollars available for research. He testified that the committee members were making no effort to "distinguish between their role as advisors to SDIO and their role as researchers seeking funding."

Soon after, he quit the Eastport Group, in part due to disgust over the way it was functioning. Later, when reviewing the 1985 Eastport report, he testified that, "Many of the remarks in the Eastport Report struck me as veiled proposals for work for its members and friends." By the way, he felt that the key recommendation underlying the ISI proposal was particularly unjustified since it was duplicative of existing system capacities and technically flawed.

I am afraid the story gets worse. ISI did not submit its proposal for SDI research to the SDI Organization. Instead, it sent its proposal to the Navy, specifically, to the Office of Naval Research. And ISI sent it to the attention of Dr. Richard Lau, an employee of the Office of Naval Research, and you guessed it, also a member of the Eastport Group.

DOD officials testified at a hearing that it was Dr. Lau who convinced the Office of Naval Research to accept ISI's unsolicited proposal and to award them a contract for more than $5 million. What happened is that Dr. Lau convinced his office to award the contract under a program for long-range research to improve Naval operations, even though ISI's proposal never mentions the Navy and only deals with research related to the SDI Program. Dr. Lau's role in the contract award to ISI suggests that ISI's deal may be tainted not only by insider information and possible self-dealing, but also by cronyism.

And it gets worse yet. Soon after the Navy awarded the contract to ISI, a news article challenged the arrangement on the ground of possible conflicts of interest. This challenge caused the Navy and SDIO to review the procurement and to halt the work temporarily. SDIO's general counsel explained to my staff that DOD ended the contract at the time and in the way it did because the contract had been improperly awarded under a research program that was supposed to benefit the Navy, not SDI.

Nonetheless, the Navy and SDIO did not terminate their relationship with the ISI. Three days after the Navy issued the paperwork to end the first contract, the Navy issued a new Request for Proposals to continue the very same research. ISI was allowed to bid on this request. Not only that, but the Navy established a 3-person Bid Evaluation Committee that was chaired by none other than Dr. Lau. And you probably guessed it again, ISI was eventually selected to win the new contract.

Some of the names and relationships involved in the ISI matter are set forth on that chart that is in front of you.[1] There are more details as well, which are included in my full statement for the record.

You have got the Eastport Group that is not properly charted under FACA, as it should have been, so that it would be subject to conflict of interest laws, disclosure laws and sunshine laws. It makes a recommendation for research to the SDIO. Within 2 weeks of that recommendation the ISI submits an unsolicited proposal to do research. One of its chief researchers, Dr. Cohen, who is on the Eastport Group, is going to supervise the research. That contract is forwarded to the Navy for consideration under a program that has nothing to do with the proposal being submitted. The contract is awarded to ISI and a key person in making that award is Dr. Lau of ONR, who also sits on the Eastport Group.

That was the example which we went into some detail on at our Subcommittee hearing.

Senator PRYOR. Your Subcommittee held a hearing on this and other items recently; is that correct, Senator Levin?

Senator LEVIN. That is right, on the Federal Advisory Committee Act. Because Eastport should have been chartered as an advisory committee but never was. This is just one example, Mr. Chairman.

Senator PRYOR. How much was the contract?

Senator LEVIN. It was a $5 million contract.

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[1] See p. 116.

Senator PRYOR. What sort of disclosure are the members of this group now, under the present law, required to provide?

Senator LEVIN. If Eastport had been properly chartered, as it should have been and as the DOD should have required it to be and as the law requires it to be, there would have been disclosure of the members' other financial arrangements. But there was none because the DOD failed to enforce FACA, the Federal Advisory Committee Act, and Eastport failed to comply with the Federal Advisory Committee Act, and as a result, it was not covered by the sunshine and disclosure and conflict of interest requirements, or at least it was not clearly covered. There is still some question.

Senator PRYOR. These are, I assume, Senator Levin, SDI dollars and SDI programs, is this correct?

Senator LEVIN. That is correct, being utilized in this case by the Navy but not for the purposes set forth in the ISI request relating to SDI.

Mr. Chairman, this is one example in which a consultant to the Government who serves on an advisory committee appears—and I say appears, because we are talking here about appearances—to have taken advantage of his position to generate business for his employer through the use of inside information and DOD contacts. The appearance is that the consultant was working the system for the benefit of himself and his employer, even though he was being paid taxpayer dollars to provide advice for the benefit of the Defense Department and the American public.

And as I indicated, the DOD was at fault here since it did not enforce its own disclosure and conflict of interest rules and did not follow up on the requirements of FACA.

Mr. Chairman, and other members of the Subcommittee, for consultants who are members of the DOD's advisory committees such as Eastport, we have a system in place for disclosing potential conflicts, provided the DOD does its job. As I indicated, we have learned that in too many cases the DOD was not doing its job, and that has got to change.

There is another problem that I want to touch on very briefly, and that is that many DOD consultants—in fact, we believe, most DOD consultants—are not members of advisory committees. They are not governed by the Federal Advisory Committee Act. They are simply hired to provide advice to the DOD under various types of contractual agreements. These are independent contractors and they are not currently required to disclose any financial arrangements that they might have to provide consulting services to members of the defense industry, nor are they subject to DOD's conflict of interest laws.

It seems to me that at a minimum it would be appropriate for the DOD to require that these contractual consultants—these are the bulk of the consultants to the DOD—it would be appropriate for the DOD by regulation to require that those consultants file financial disclosure forms similar to those required of DOD advisory committee members so the DOD knows where their other interests lie, and DOD also should develop conflict of interest rules for those consultants.

Mr. Chairman, there are times when conflicts and appearances of conflicts are going to occur in any procurement process. There

are times when you knowingly will want to hire somebody as a consultant who has other private interests—knowingly is the key word—because of the expertise that has been garnered by that consultant during that process of advising private interests.

But at a minimum, it seems to me, you want those private interests disclosed so that when you hire that consultant you know what are the potential conflicts. And it would also strike me that the DOD should adopt some conflict of interest laws to apply to consultants, again, the bulk of whom are not members of these advisory committees but are simply independent contractors providing advice under contract.

Mr. Chairman and other members of the Subcommittee, that is the area we have been looking into and some of the suggestions we have. We will be urging by letter that the Secretary of Defense apply these disclosure rules and adopt some conflict of interest rules to consultants, just as those rules are supposed to be applied to members of the advisory committees.

We would be happy to work with this Subcommittee on the devising of the correct remedies for what at least we perceive, some of us, as problems in this area.

[The prepared statement of Senator Levin follows:]

PREPARED STATEMENT OF SENATOR LEVIN

You've asked me to discuss one category of DOD consultants that I have spent some time examining over the past year—the consultants that participate on DOD's advisory committees.

The United States currently has about 1,000 chartered advisory committees. Of that number, DOD has about 60. In addition, DOD has had a number of advisory committees that have functioned outside the law which governs them, the Federal Advisory Committee Act. Individuals who serve on DOD's advisory committees—both chartered and unchartered—are a type of consultant to DOD. When these individuals serve at the same time as consultants to defense contractors, that is where problems can and do arise.

There are two key sets of rules, already on the books, which address or seek to prevent some of the problems that can arise when members of DOD advisory committees also serve the DOD contracting community, and provide advice to DOD on matters of financial interest to themselves or their employers. The first set of rules is DOD's Standards of Conduct, set forth in DOD Directive 5500.7. There rules require advisory committee members to file financial disclosure statements identifying their financial relationships and interests, and to comply with certain conflicts of interest rules. When an issue comes before an advisory committe involving a financial interest of a memnber, that member is expected, under DOD's standards of conduct, to recuse him or herself from that discussion.

The second set of rules is the Federal Advisory Committee Act or FACA. FACA imposes a number of management and fiscal controls over federal advisory committees. It requires, for example, that the meetings of federal advisory committees be open to the public and that minutes be taken and made available. It also requires the committees to register with the General Services Administration by filing a charter. That is important because chartered committees are subject to greater public scrutiny and monitoring by DOD ethics officials, which means that their members are much more likely to comply with DOD's disclosure and conflict of interest rules.

When properly followed, the conflict of interest and sunshine provisions which apply to DOD advisory committees go a long way towards protecting the government from double-dealing by a consultant. But, the problem is, when the Governmental Affairs Committees are not being chartered under FACA, as they should be, and that the DOD financial disclosure and conflict of interest procedures are not being followed or monitored. In those cases, that means we are not protected form opportunist consultants.

One DOD advisory group we looked at in detail, the Eastport Group, demonstrates DOD's lack of enforcement of the current rules and the problems that can result. By

the way, the Eastport Group was not the only problematic advisory committee we found. it is part of a pattern at DOD of lax treatment of advisory committees associated with the Stategic Defense Initiative Organization—a pattern which we documented at a hearing in April.

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ISI's unsolicited proposal, coming two weeks after the Eastport report was released, smacks of insider information. Even worse, it raises questions of self-dealing and possible conflicts of interest. The question I have to ask is whether the Eastport recommendations were fashioned not to identify work needed by DOD but to set the stage for a favorable response to ISI's contract proposal.

At the April hearing exploring the ISI contract actions, one leading computer scientist and a former member of the Eastport Group, Dr. David Parnas, testified that the first meeting of this group struck him as a session in which the committee members were presenting personal proposals to DOD officials to carve up the SDI dollars available for research. He testified that the committee members were making no effort to "distinguish between their role as advisors to SDIO and their role as researchers seeking funding." Soon after, he quit the Eastport Group, in part due to disgust over the way it was functioning. Later, when reviewing the 1985 Eastport report, he testified that, "Many of the remarks in the Eastport Report struck me as veiled proposals of work for its members and friends." He characterized the key recommendation underlying the ISI proposal as particularly unjustified since it was duplicative of existing system capacities and technically flawed.

And the story gets worse. ISI did not submit its proposal for SDI research to the SDI Organization. Instead, it sent its proposal to the Navy—specifically to the Office of Naval Research. And they sent it to the attention of Dr. Richard Lau, an employee of the Office of Naval Research and—you guessed it—also a member of the Eastport Group. DOD officials testified at a hearing that it was Dr. Lau who convinced the Office of Naval Research to accept ISI's unsolicited proposal and to award them a contract for more than $5 million. What happened is that Dr. Lau convinced office to award the contract under a program for long-range research to improve Naval operations, even though ISI's proposal never mentions the Navy and deals only with research related to the SDI Program. Dr. Lau's role in the contract award to ISI suggests that ISI's deal may be tainted not only by insider information and possible self-dealing but also by cronyism.

And it gets worse yet. Soon after the Navy awarded the contract to ISI, a news article challenged the arrangement on the ground of possible conflicts of interest. This challenge caused the Navy and SDIO to review the procurement and to halt the work—temporarily. SDIO's General Counsel explained to my staff that DOD ended the contract at the time and in the way it did, because the contract had been improperly awarded under a research program that was supposed to benefit the Navy, not SDI. Nonetheless, the Navy and SDIO did not terminate their relationship with ISI. Three days after the Navy issued the paperwork to end the first contract, the Navy issued a new Request For Proposals to continue the very same research. ISI was allowed to bid on this request. Not only that, but the Navy established a three-person bid evaluation committee that was chaired by none other than Dr. Lau. And you probably guessed it again, ISI was eventually selected to win the new contract.

Documentation provided to my staff demonstrates that Dr. Lau again played a key role in ISI's getting the work. Three parties bid on the contract. One proposal was rejected by all three evaluators for poor quality. Of the two proposals left, one evaluator assigned ISI's competitor significantly higher scores, one evaluator gave ISI slightly higher scores, and Dr. Lau gave significantly higher scores to ISI. In writing up his report on the technical evaluations, Dr. Lau acknowledged the close scores of the two proposals but then recommended that ISI's competitor be rejected

as non-responsive to the Request For Proposals because it did not include measures to guarantee innovative research.

The result was that ISI's competitor was eliminated from the competition as non-responsive without being given even the opportunity to revamp its proposal to include measures for innovative research. The Navy took this step despite the facts that one evaluator had rated the competitor's proposal superior to ISI's and the competitor's proposal was millions of dollars less in cost. Instead, the Navy selected ISI to do the work with no significant reduction in the contract price ISI had proposed. At the time of our hearing in April, ISI had already begun work on the second contract, even though funds had not yet been officially approved for the work. After our hearing, the Navy and SDIO apparently decided that they can live without the award to ISI and have rescinded the agreement. In fact, they have also decided to no longer fund the Eastport Group. And the Office of Government Ethics and the DOD General Counsel's Office are examining the ISI contract actions to determine what DOD rules were violated.

This is one example of a situation in which a consultant to the government who serves on an advisory committee appears to have taken advantage of his position to generate business for his employer through use of inside information and DOD contacts. The appearance is that the consultant was working the system for the benefit of himself and his employer, even though he was being paid with taxpayers' dollars to provide advice for the benefit of the Defense Department and the American public. In addition, DOD was at fault here, since it didn't enforce its own disclosure and conflict of interest rules and didn't follow the requirements of FACA. Had DOD done so, the relationship of Dr. Cohen to ISI would have been known to DOD ethics officials and the decisions of the Eastport Group and the ISI contracts could have been monitored and handled differently.

For consultants who are members of DOD's advisory committees, we have a system in place for disclosing potential conflicts—provided DOD does its job. Unfortunately we've learned that in many cases DOD is not doing its job. That must change.

But there's another problem as well. Many DOD consultants—in fact, we believe, most DOD consultants—are not members of DOD advisory committees. Instead, many are hired to provide advice to DOD under various types of contractual agreements. These independent contractors are not currently required to disclose any consulting arrangements they may have with other members of the defense industry, nor are they subject to DOD's conflict of interest rules. It seems to me that, at a minimum, it would be appropriate for DOD to require these contractual consultants to file financial disclosure forms similar to those required of DOD advisory committee members so that DOD knows where their interest lie. DOD should also develop conflicts of interest rules applicable to these consultants.

There are times when conflicts and appearances of conflicts are going to occur in any procurement process. If we are to have confidence that those situations are being handled correctly, at a minimum, we ought to require disclosure and conflicts of interest rules. That is not what's happening now, especially with respect to DOD consultants. We need to improve not ony the disclosure and conflict of interest procedures already in place for DOD advisory committee members, but also we need to extend similar procedures to DOD's contractual consultants.

While such rules may not cure all the problems we face with consultants, it would be an important first step. Consultants who serve both DOD and defense contractors are subject to tremendous temptations: to feed information gained from DOD duties to clients hungry for the inside scoop; to use contacts with DOD officials to help clients develop personal relationships with key decisionmakers; and worst of all on this slippery slope, to start fashioning advice given to DOD officials in order to benefit private clients who have products and services to sell. That's not what we're paying our consultants for.

To begin defusing these pressures, disclosure and conflict of interest rules need to be developd by DOD. I am happy to work with you and your subcommittee as we seek to achieve that and other workable solutions to the difficult problems presented by DOD consultants.

Senator PRYOR. Senator Levin, you have performed a great service in coming before the subcommittee this morning and we want to thank you.

Senator Stevens.

Senator STEVENS. Well, I think you, too, although my memory is that former Senator Mattingly of Georgia attempted several times

to reduce consultant expenditures in 1985 and 1986 and the Armed Services Committee opposed those efforts.

Do you recall that?

Senator LEVIN. I recall the effort to reduce consultants, I think on the floor by amendment, by a number of Senators. I do not know that the Armed Services Committee has ever taken a position on it, as a Committee. I do not know. Various members may have voted yes or no on particular amendments. But I have no recollection, Senator Stevens, although your recollection could be better on this than mine, that the Armed Services Committee took a formal position on the reduction.

Senator STEVENS. That was on the appropriations bill. I know that the Chairman is continuing that effort to try and reduce expenditures for consultants, and I think necessarily so. There seems to be a lot of contracting out for the purpose of verifying the conclusions that have already been reached by those we have hired to reach the conclusions.

Senator LEVIN. Could I add in that regard a comment, Senator Stevens. I think whatever the level is of the use of consultants, whether it is $3 billion, $2 billion, whatever that level is, what I am urging here and suggesting is that the disclosure rules apply to consultants so that we know what other clients they represent which might present a conflict, and that there be some conflict of interest rules devised by the Department of Defense.

We can agree or disagree as to whether you can even set an artificial limit on consultants, whether it ought to be set in some way in statute or otherwise. But the point here is that whatever level you end up at, and people will differ on that, the question is shouldn't we at least know of the outside work that is being done by those consultants, the outside clients that they have, that could put them in a conflict situation.

Senator STEVENS. I agree with that. Do you agree with my feeling that one of the reasons that the Department of Defense gets into these consulting contracts with some of these think tanks and other organizations is because of the pay scale that is available at the Department of Defense?

I know a considerable number of these people who have worked under consultant contracts to the Department of Defense just would not come into Government at the salary that the Department of Defense can pay. As a consequence, they are in these organizations that are peripheral to the beltway and they work under consultant contracts and there is no limitation on the salaries that are paid pursuant to the consultant contracts, as I understand it.

Do you think that is one of the defects that is forcing us into this consultant mode?

Senator LEVIN. I think there is pressure in that direction caused by the internal salary limits. By the way, just to give you an example, in FACA, the advisory committee limit, on a per diem basis, for people advising us is about $250 a day. Eastport was paying its consultants $1,000 a day. They ignored the law governing advisory committees. So that gives you some idea of what people can command privately versus what the Government is willing to pay.

Senator STEVENS. The Government has been going over the consultants that the Congress is hiring and what they are paying and Eastport is not out of line.

Senator LEVIN. We have not made that comparison.

Senator STEVENS. Thank you very much, Mr. Chairman.

Senator PRYOR. Senator Bingaman?

Senator BINGAMAN. Thank you, Mr. Chairman.

Let me ask Senator Levin, if I could—and I got in a little late on some of your testimony—but as I understand it, your view is that if this Eastport Group had been properly designated as an advisory committee and the provisions of the Federal Advisory Committee Act had been used and applied and implemented in this other DOD Directive 5500.7 that you talk about on page 2 of your testimony, that if that had all been done, the problem which arose here would not have occurred?

Senator LEVIN. Probably would not have occurred. At least, it would have been open to sunshine. The GSA would have been tracking it, because the charter for advisory committees are granted by GSA and they oversee them. There are then not only disclosure requirements, there are recusal requirements. People must recuse themselves if there is a conflict. And the conflict laws clearly apply, whereas right now there is some question even as to whether conflict laws apply in this situation. So I would think that at least the appearance problem which exists would have been obviated and possibly the reality itself would not have occurred in the way it did, but we do not know that for sure.

Senator BINGAMAN. So you are saying that for folks who serve on advisory committees to the Department of Defense, if those advisory committees are properly instituted under this Federal Advisory Committee Act and if the otherwise applicable DOD directives are implemented and enforced, that the problem of people serving on those advisory committees being involved in conflicts or working for DOD and for private consultants on particular projects would be under control.

You are still saying, though, that we need a change in the law, either statutory or otherwise, to handle those consultants who get involved in the same kind of thing but do not wind up serving on an advisory committee?

Senator LEVIN. Senator Bingaman, let me be precise. If you have a chartered advisory committee, the members are subject then to DOD's ethics rules and conflict of interest rules; the disclosure rules are all then applicable to all of those members.

Senator BINGAMAN. If DOD follows the law as intended?

Senator LEVIN. If they charter them the way they are supposed to. We have many examples where they ignored the law, both the advisory committees and the DOD. But if they follow the law, then you have all those rules applying. You avoid that problem.

Senator BINGAMAN. Right.

Senator LEVIN. Could there have been a contract to the ISI? There still could have been, but there would have been recusals, disclosures, and there would not have been this appearance that exists here where we do not know what went on. In fact, we are confident there were no recusals, by the way, and we know there were no disclosures.

To answer your second question, the vast majority, we believe, of DOD consultants do not serve on advisory committees. They are independent contractors providing services under separate contracts to the DOD. They are not covered now by any disclosure rules. They are not covered now by conflict of interest rules. And for reasons similar to these in the Eastport example, they surely ought to be covered by disclosure rules, we think, and there ought to be some conflict rules that apply, and they should be devised by DOD, because they are complicated.

Let me emphasize again, we at times will want to hire somebody as a consultant who has expertise resulting from private contracts with outside companies. That person may have information that we need and want to use, but we want, then, disclosure at a minimum. We want to know what those conflicts are when we get into that situation and there should be some conflict of interest rules devised to cover that situation to avoid any appearance that someone comes, gives us advice, in order to benefit some private client.

Senator BINGAMAN. Thank you, Mr. Chairman.

Senator PRYOR. Thank you, Senator Bingaman.

Senator Sasser.

## OPENING STATEMENT OF SENATOR SASSER

Senator SASSER. Thank you very much, Mr. Chairman. I am sorry I missed Senator Levin's opening comments this morning.

I want to commend you, Mr. Chairman, for convening these hearings this morning. I think they will be very worthwhile and I am confident that some very constructive legislation will come out of these hearings ultimately.

I have a statement that I will not read but ask that it be placed in the record.

Senator PRYOR. Without objection it will be placed in the record.

[Senator Sasser's prepared statement follows:]

### PREPARED STATEMENT OF SENATOR SASSER

I would like to commend my friend and colleague, Senator David Pryor, for his continued leadership in this investigation of the growing use of consultants by the Department of Defense which has prompted this hearing today.

In recent weeks and months, considerable attention has been devoted—in the national media and here on Capitol Hill—to the proliferation of consultants who do millions—if not billions—of dollars of contract work with the Pentagon each year. Disclosures of defense fraud and contract abuse and favoritism—many involving defense consultants—have understandably alarmed each and every one of us who fear we are paying more and getting less for our defense dollar.

Since the beginning of this decade, the United States has witnessed a record peacetime build-up in our national defense. This program to strengthen and modernize our forces obviously an expensive proposition. As billions and billions are spent for major weapons systems, we have found ourselves vulnerable to potential misuse of public funds, scandal and fraud.

During this escalation of Department of Defense expenditures, the proliferation of private defense consultants who work "both sides of the street" has skyrocketed. Consequently, Congress has found the need to establish in-house auditors, inspectors and investigators to provide oversight into the growing use and sometimes misuse of defense consultants Dilemma.

In 1980 as Mr. Vander Schaaf testifies here today—a 1980 General Accounting Office study resulted in enactment of a new law which require agencies to provide specific data on consulting services in conjunction with their budget requests. This helped to provide greater agency accountability, with regard to the use of defense consultants.

In 1982, Congress established the Department of Defense the Office of Inspector General with the responsibility for policy and oversight of audit follow-up and activities within the Department. Here, again, the DOD Inspector General was charged against defense department consultant abuse.

A 1986 General Accounting Office report to the Governmental Affairs Committee revealed the need for broader investigation powers by the DOD Inspector General and lack of remedial follow-up to complaints of waste, fraud and abuse. Furthermore, just two days ago in testimony before the House Armed Services Committee, DOD Inspector General June Brown warned that pending budgetary reductions in DOD audit units could have a adverse impact on future investigations.

Clearly, Defense Department fraud and abuse must be wiped out root and branch, and we cannot afford any reduction in the resources we need to cut DOD contract fraud, some of which is related to improper activities of defense consultants.

In 1986, following the Packard Commission's lead, Congress accepted recommendations that all Defense contractors adopt policies of voluntarily disclosing potential fraud problems to the Office of Inspector General.

However, this policy of self-governance system for curbing fraud has not worked. The hearing before the House Armed Services Committee—the other day—revealed that 39 of 46 defense contractors who had agreed to police their own compliance now have come under investigation for fraud.

Consultants can serve a useful purpose for the government and contractors who deal with the government. Yet, in too many cases, some consultants have become fast-bucks artists with little or no regard for the public interest. They have become middlemen in a growing defense scandal which threatens to erode public confidence in our national defense.

This must be stopped. The Executive Branch, the Congress, and the Defense community must take a series of rapid and forceful actions to eliminate the unethical consultant and all of his practices.

Senator SASSER. Senator Levin, I am sure you are familiar with the Packard Commission's report to Congress in 1986 in which we accepted recommendations that all defense contractors adopt policies voluntarily disclosing potential fraud problems to the Office of the Inspector General. Now, we were embarking then on what we thought was a policy of self-government, of a system of curbing fraud and abuse that might occur in the Department of Defense.

But in hearings before the House Armed Services Committee just the other day, it was revealed that 39 of the 46 defense contractors who had agreed to police their own compliance with various regulations have now come under investigation for fraud.

What is your view in light of that of the whole business of voluntary compliance on the part of contractors or consultants or voluntarily disclosing potential conflicts of interest and other problems? Should we rely on them to do that voluntarily?

Senator LEVIN. Senator Sasser, I think self-governance is useful and we ought to encourage it, but it is simply not enough. We should not rely on it. It is not enough to protect the public interest. The vast majority of contractors do not participate in that program. The 46 or 48 or whatever the number is that do represent a large number of contracting dollars, by the way, but a minute percentage of the defense contractors that are out there.

The fact that you raise, that some of them may be under investigation is another reason. If you rely on volunteerism totally to protect you, you will be disappointed, I am afraid, too often. That does not mean that any of those are guilty, and we should not prejudge it. But nonetheless, for those reasons I would say we ought to encourage this kind of activity in the defense community—they should be policing themselves a lot better—but we cannot rely on that to protect the public interest.

Senator SASSER. Thank you, Senator Levin.

Senator PRYOR. Thank you, Senator Sasser.

Once again, Senator Levin, we thank you. I think in Wall Street language we would describe what you are talking about as insider trading. In plant life, it would be cross-pollination. In Washington lingo, it looks like a conflict of interest to me. That is my own personal observation.

We thank you very much for appearing.

Senator LEVIN. Mr. Chairman, thank you and the other members of the Subcommittee.

Senator PRYOR. We have our next witness to call at this time, Dr. Lawrence Korb.

Senator STEVENS. Mr. Chairman, I have to join Senator Levin in a negotiation between the Armed Services Committee and the Appropriations Committee, but I will be back. Can you tell me about how long you think the witnesses will take?

Senator PRYOR. I do not know. Dr. Korb will appear by himself. Then we have a panel of three, and then we have the Inspector General and the Director of DCAA coming. I do not know. Would you like to ask any questions at this point?

Senator STEVENS. No. I will be back.

Senator PRYOR. Fine.

We are pleased to have this morning Dr. Lawrence J. Korb. Dr. Korb is the Director of the Center for Public Policy, Education at The Brookings Institution.

From 1981 through 1985 Dr. Korb served as the Assistant Secretary of Defense for Manpower, Installations and Logistics. Previously he held positions at the American Enterprise Institute, the Naval War College and the U.S. Coast Guard Academy.

In 1985, Dr. Korb left the Pentagon to become Washington Director for the Raytheon Corporation, a defense contractor. Raytheon and Dr. Korb parted ways soon after Dr. Korb and several other defense experts publicly discussed ideas for improving the defense budget.

Dr. Korb, let me say that I, for one, am glad you left Raytheon and that you are today here to speak freely. You are very knowledgeable. You understand the system. You know what makes it work and you what makes it break down. I think that this will be a rare insider's look into the procurement process.

We welcome your statement today and then we hope that you will submit yourself to questions.

## TESTIMONY OF LAWRENCE KORB, PH.D., DIRECTOR, CENTER FOR PUBLIC POLICY, EDUCATION, THE BROOKINGS INSTITUTION

Dr. KORB. Thank you very much, Mr. Chairman. It is a pleasure and a privilege to be here. I do not have a prepared statement. I have a few remarks that I would like to make.

To say the least, the subject we are to discuss today—consultants—is a confusing one. First of all, we have the question of definition; what exactly are we talking about when we talk about consultants? There are people who consult for industry. There are people who consult for Government. And in this case, we are talking about the Department of Defense. But there are some people

who consult both for industry and Government and they are the same people.

We also have, consulting companies, which in many cases ring the beltway, that really are kind of an alphabetic soup. They go from A to T as far as I know. But they all have these three or four letters in their names and many of them are very, very big companies. Other consultants are just simply individuals, usually people who work for Government and industry and sometimes they work out of the basements in their homes.

We also have the question of what do consultants do. Some consultants provide expertise on the substance of an issue or on the process, while others are hired primarily because they can provide access to key decision makers.

There are a number of questions we ought to ask. The first question is why do we have consultants. I think, as Senator Levin pointed out, many times there are individuals who have unique knowledge that we need in order to solve a public policy issue. But there are many other reasons that I think are important. For example, in the Department of Defense, again, as Senators Stevens and Levin pointed out, many times because of the low salaries that we pay and the demands that we put on people—for example, if you wanted to bring somebody in to the Pentagon and they lived outside of Washington, many times you could not pay their moving expenses—because of these low pay scales, you simply did not have the expertise that the Government should have had.

A related problem is, often times in the Pentagon there are artificial manpower ceilings. When I was in office, we fought, successfully, to have manpower ceilings removed. I believed then and I believe now—and I understand they have been reimposed—that the Department should have the funds to do the job and let it determine the manpower ceilings. Because what happens, when you slap a manpower ceiling on, which is not commensurate with the work you have to do is that you still need to get the work done, so you got out and you use consultants.

A final reason—and this has also been alluded to by Senator Stevens—many times when you are asked to do reports there is a feeling that if you get somebody "outside" of your office and they come to a conclusion, it is more reputable than if your own office did it. I do not support that view but I do know that in many cases that is the perception.

Similarly, why do we need people who interface between industry and Government rather than just for Government or industry. My experience with industry has been that defense companies are so concerned because of the enormity of the potential contracts that they leave no stone unturned, and thus they are willing to hire just about anybody who can promise even the least little thing.

Another advantage of hiring a consultant is oftentimes there are occasions when if you hire a consultant and that individual does something that he or she should not, the company is not held responsible and therefore it is not subject to suspension or disbarment.

Now, what problems result? First of all there is the question of the exact number of consultants. As you have up there on your

chart, there is a wide disparity between what is officially reported in the budget justification and what the General Accounting Office is talking about.

Let me share with you one anecdote that occurred in my time in office that I think illustrates this problem. As Senator Stevens has said, there were concerns on the part of the Senate, people like former Senator Mattingly, that DOD was spending too much on consultations. So they asked my office to send over to the Congress the amount of consultants that we had. We asked all the services for their members. I thought they were a little bit too low. But I went back and they said, no, that is exactly what it is. So we sent those numbers over.

Well, the Congress took those numbers and they put a freeze on, and the next year one service—this was the Navy—in this case came back and said, well, we need to go above the freeze because we spend a lot more than that on consultants. I think that gets to the point we are talking about here, exactly what is a consultant. And I would hope that as a result of hearings like this what we can come to a very, very clear, acceptable definition because until we do we can't deal with the problem.

The second problem that you have, and again, it has already been alluded to, is the access to information that the Government must give to a consultant if he or she is to perform the proper job, whether it is on an advisory committee or whether in fact you are asking them to do a study. The problem is that many of these individuals, in addition to consulting for the Government, do have private interests and the information they get, obviously, can be used or abused.

Another area I think that you ought to focus on is the role of the Federal Contract Research Center. My feeling is that if in fact the Department of Defense had to do a study and it does not have the people, or it does not have the expertise, maybe does not even have the time, because there are lots of times you are asked to do reports, sometimes with a short fuse, that you should go first to the Federal Contract Research Centers.

I know in my own case, I always tried to go to the Logistics Management Institute first because here you have people who are not working for the private sector and you do minimize these potential conflicts of interest.

I do think we need a code of ethics for people who are consultants. Industry, many companies have their own code of ethics. The Government, obviously, has it standards. But what is it really that guides these consultants?

There is also the whole question of independence, even if you go to one of these consulting firms for theoretically unbiased judgment. In my view, other than the FCRCs, the Federal Contract Research Centers, many times these private consultants would not give you bad news because they know if they gave you bad news you might not go back to them again. And this is the whole question of how you can expect any of these companies, regardless of what their initials are, to tell you things that you do not want to hear because if in fact they do and it becomes public that company XYZ has told the Pentagon that they are spending too much in this

particular area, is in fact the Pentagon going to give them any more business?

The solutions, very quickly, I think we need to agree on the problem of definition so we can have an accurate report. We ought to have some sort of control or registry over who these individuals and companes are and what they are doing.

What concerns me about this problem is the whole lack of concern or lack of dedication to the public service or public interest. We seem to have lost this concept, that whether one is in the Government or working for the Government, you really should have the public's good at heart. Therefore, if people do keep that in mind and they do come out and speak about what they think is right for the public, regardless of whether they are working for one of these organzations, or whether they are in Government, whether they are an independent consultant, that they are not penalized for it.

Thank you, Mr. Chairman.

Senator PRYOR. Dr. Korb, thank you. Two or three questions. I tell you, I am going to impose the 5-minute rule. I will impose it on myself first and then on my colleagues and hopefully we can ask Dr. Korb the questions that we need to.

You left the Pentagon, I understand, in 1985 for Raytheon.

Dr. KORB. That is correct.

Senator PRYOR. Then it is my understanding that along about 1986 you became involved with a small group of people who looked very carefully at and scrutinized the defense budget. You then made a public statement about the DOD budget. I think the public statement went something like this, reading from a February 26, 1986, *Washington Post* story: "The Pentagon can pare some $200 billion from its 5-year spending plan and emerge nonetheless with a stronger force." I believe that is the quote.

Senator SASSER. Pare how much, Mr. Chairman?

Senator PRYOR. $200 billion, I believe, from the 5-year spending program. Was this your feeling at that time?

Dr. KORB. Actually, what I said was that because of the passage of Gramm-Rudman-Hollings which said that we had to reduce the deficit, it was clear that the Pentagon was going to get less than they had asked for, which in this case I estimated to be about $200 billion. Actually, if anything, I was optimistic, given what has happened as a result of congressional action and the actions of Secretary Carlucci. It is more in the neighborhood of about $400 billion that has been cut from that 5-year program, and I argued that we needed to deal with this program systematically; and that if we did deal with it systematically, we would emerge with a stronger force than if we had just come in every year with these requests that did not have a realistic chance of being approved by the Congress in light of the need to reduce the deficit.

Senator PRYOR. Dr. Korb, you have been in the inner circle at the Pentagon. I imagine several times a week you met with Secretary Weinberger and Mr. Carlucci and others. And then you go to a contracting company or a defense contractor. What was the reaction back at the Pentagon when you made such a statement?

Dr. KORB. Well, to say the least, some of my former colleagues were upset.

Senator PRYOR. How upset?

Dr. KORB. Well, some were upset enough to call my employer.

Senator PRYOR. May I ask, one, who made the call—or you may not want to say that—or what they told your employer, Raytheon?

Dr. KORB. Well, I would prefer not to get into it because this subject is before the courts. I think I can say that there were officials who called, and as a result of those calls, my bosses at Raytheon told me I was in a lot of trouble. And soon thereafter, I was in more trouble than I thought because I had to go look for another job.

Senator PRYOR. You were put out on the street.

Dr. KORB. Well, it was not quite that way, but eventually, that was the outcome.

Senator PRYOR. You know, for years we have looked at the procurement system. I know that Senator Sasser and Senator Bingaman and others have studied this system. And I must say I probably know less about it now than I did 8 or 9 years ago.

I have always known there was something wrong about it, but I have never been able to articulate it well. What do you think is right with the system, and what do you think is wrong with the procurement system?

Dr. KORB. Well, I think what is right with the procurement system is that, despite all of the problems that result, we do produce some excellent weapons systems. There are wonderful case histories of DOD having produced some of the finest technology in the world, and it has been tested in battle. For example, the Israelis' use of the F15's and F16's in the Bakka Valley has shown that these are fine pieces of equipment.

The problems that you have, is that one has to manage the system aggressively to ensure that it works as well as it should. This is not the subject of today's hearing, but I would urge the Congress, as you get into this whole situation, to really be very careful about passing new laws and making the process more cumbersome.

It seems to me that if you manage it aggressively, and if you put into office people who are dedicated to the public service, if you have the proper checks and balances, that it can work very, very well.

Senator PRYOR. What is wrong with the system? You just told us what is right, but what is wrong with it?

Dr. KORB. Well, in terms of what is wrong with the system, I do not think there are any fundamental problems. For example, if you have the proper checks and balances it works well. When I was in the Pentagon, I was very concerned when the Navy disestablished the Materiel Command because I felt——

Senator PRYOR. Was that done by Secretary Lehman?

Dr. KORB. That was done by Secretary Lehman. And I felt that while his purpose theoretically was to eliminate layers of bureaucracy and to speed up the process, that it removed a necessary check in the system; it removed the system integrator; and that if the Army and the Air Force felt that these were necessary, then I could not see why the Navy did not want to use them. And when you do something like that, though you may speed up the process, what you do is, by removing one of the checks, you allow individuals to exercise more power over the process.

I always felt very comfortable with knowing that a four-star flag officer—in this case, the head of the Materiel Command—was the final arbiter of the process before these things went up to the Secretary's office.

Senator PRYOR. In your contacts with some of your former—I do not want to say "former friends"—colleagues in the Department of Defense, have you sensed any outrage over at the Department of Defense about this so-called scandal in the Pentagon?

Dr. KORB. Yes, I have.

Senator PRYOR. I am glad to hear it.

Dr. KORB. And I will tell you what the outrage is. Obviously, lots of my former colleagues are people who came into office with President Reagan in 1981, and many of us worked very hard in the 1970's when the American people seemed not to be as concerned about national security as they should have been or about the Soviet buildup because of the so-called Vietnam hangover. And we felt it was very important for people to realize that we needed a strong, sound national defense. And the sense of outrage is this:

We came into office, and the Congress and the American people really provided us with a great amount of money, probably more money than many of us thought was possible, particularly in the first Reagan Administration. And because of a number of events, the so-called spare parts horror stories that occurred in 1983 and 1984, and this particular event now, that we squandered that inheritance.

I think the sense of outrage was best expressed by former National Security Adviser Robert MacFarlane in a piece he wrote for the *New York Times,* where he talked about the Defense Department, because of ineptitude and hubris squandered the investment. The outrage is that many of us fought very hard in the decade of the 1970's to get the American people to realize that we needed a strong national defense. We got in, we had the opportunity, and at the end of 8 years, we may not have gotten the most out of that money. And that is the sense of outrage.

When many of these people are out of office, I think you will see them expressing this frustration more publicly. It is very difficult for them now because of the situation in which they find themselves.

Senator PRYOR. Dr. Korb, my time is up. But when I return with questions, I would like to ask you a few questions about the Defense Science Board and the advisory committees in the various branches of the services.

I will use the early-bird rule. I believe Senator Bingaman was first. Senator Bingaman.

Senator BINGAMAN. Thank you, Mr. Chairman.

Dr. Korb, let me ask on the issue of consultants, I guess trying to just conceptualize what the problem areas are. There are folks who are sort of categorized as consultants or companies that are categorized as consultants, that really are hired by contract to do operational work. At least from what I have generally understood, that is not where the major problem area is. I mean, if they take over the operation of a particular facility or something.

Is that accurate?

Dr. KORB. I definitely agree that that is not—if you hire PanAm, for example, to run a base, that is hardly a consultant. And that is where I said the first problem is; the problem of definition.

Senator BINGAMAN. Right.

Dr. KORB. Too often, we mix up these terms. With this particular situation that we have, people are throwing the word "consultants" around so widely that we lose sight of what the problem is.

Senator BINGAMAN. I think the problem, as I see it at any rate, comes down to those folks who are hired by the Government, by the Department of Defense or one of the services, to give advice or are in some way employed to make decisions, either as internal employees or as consultants. They really have the decision-making capability. And the question is: Are they making those decisions or are they giving that advice in a way that is intended to promote the best interests of the country? Or are they doing it for some personal gain or for some defense contractor's benefit or something to that effect?

We are trying to find ways to ensure that the system demands and establishes the loyalty of the folks who are actually getting paid by the Department of Defense or by the services. Is that accurate?

Dr. KORB. I think that is a very accurate portrayal, Senator.

Senator BINGAMAN. The other piece of it which you alluded to in your statement is that we need to ensure that there is not some never-never-land; I mean that, in fact, if the consultant is not being hired or paid by the Department of Defense but instead is being hired and paid by a defense contractor, that the defense contractor is accountable and is responsible for the actions of that person?

Dr. KORB. That is correct.

Senator BINGAMAN. So that you do not have a situation where a defense contractor could take the view that they had a consultant on contract, but the consultant did some things that he or she should not have, and they are not responsible; the consultant was acting as a free agent.

So I guess we need to ensure that the folks getting paid by DOD and by the services are accountable and responsible and loyal to the DOD and the services. And the folks getting paid by the defense contractors are accountable and responsible and loyal to the defense contractors, and that where people cross over that line, there is full disclosure.

Dr. KORB. That is right.

Senator BINGAMAN. And that were it is appropriate, there is a recusal. If we have got anybody working on an advisory committee, such as this situation that Senator Levin earlier referred to, and something comes up that affects the company they work for or consult for, they should not only disclose that and have that clearly understood by the Government, but they also should recuse themselves from making decisions affecting the firm that is otherwise paying them.

Dr. KORB. That is correct. I agree with that 100 percent.

Senator BINGAMAN. Okay. Are there pieces of this thing that I am leaving out here that occur to you that we also ought to focus our attention on? I guess I am just trying to conceptually outline what the problem areas are. That is sort of a cut at it. If you have

other thoughts of items that should be in that outline, I would be anxious to hear them.

Dr. KORB. The only thing I would urge you, as you look at the Department of Defense, with which I am obviously most familiar with, recognize that if you put on a manpower ceiling but still give them the money to perform certain things, you are, in effect, going to drive DOD to use people outside, and that increases some of the risk that you are trying to minimize.

I know for a couple of years we had no manpower ceilings and let me tell you, I think we did a better job for the Congress and the American people because we were not artificially constrained. We did not have to play games. Many times people would take individuals from the Department of Defense payroll and put them on the payroll of one of these consulting firms. So, in fact, you would have the same person doing the work. And I think we desperately need to raise the salaries of Government people. Because in the final analysis, you lose too many good people because of the pay.

Senator Stevens quite rightly pointed out, we would have people who used to work for us, and then they would go out and work for one of these so-called consultant firms, be doing the same work, making twice as much money. That was bad for us as well as the other people staying in.

Senator BINGAMAN. You are saying the low pay makes it more difficult to ensure the loyalty and the continuity and the accountability of employees to the Department of Defense?

Dr. KORB. Yes. I think it does. But it also deprives you of some of the people that you would like to have working there, because then they will leave and go out and become consultants.

Senator BINGAMAN. Okay. Thank you very much, Mr. Chairman.

Senator PRYOR. Senator Sasser.

Senator SASSER. Thank you very much, Mr. Chairman.

Dr. KORB. I was pleased to hear you say that there was a group during the 1970's that was concerned about the fact that our defenses had been allowed to lapse to some extent. And I would like to just point out historically that this occurred during two administrations. It is fashionable around this town to say that, well, the defenses of this country were allowed to lapse during the period of the Carter Administration. The facts are that this began as we were coming out of the Vietnam War, and Secretary Schlesinger, who was the Secretary of Defense under President Ford, resigned in protest. And in the early years of the Carter Administration, that is when we began the first efforts to rebuild our defenses coming out of Vietnam, and those in your position whe were familiar with the history know that that is accurate.

I was pleased to hear you say this morning that we had let our defense perhaps weaken during the whole decade of the 1970's, to some extent.

Senator Pryor indicated that you were of the opinion that we could cut about $200 billion from our defense budget over a 5-year period and still not weaken the effectiveness of our defense efforts. According to my rudimentary arithmetic, that would be anywhere from a 15 to 20 percent cut over a 5-year period.

I was interested to hear that statement because not too long ago, I read an analysis which indicated that had we had in place in

DOD now the same procedures that were in place when Robert McNamara was Secretary of Defense, that Robert McNamara's Department of Defense would have gotten the same bang for the defense buck for $280 billion that Cap Weinberger's Department of Defense wanted to spend $320 billion on.

Now, my question to you, Dr. Korb, is: What are these procedures? I know that is a very large question, and I am asking you to answer it with not enough time, I am sure. But what are the steps that we can take to ensure that we get the maximum for the defense dollar being spent? There is a sense across this country that we are paying more for defense and getting less, and as you have very accurately pointed out, that has, in effect, destroyed the consensus among the American people that existed in 1979 and 1980 that we wanted a stronger defense and were willing to pay for it.

Now, what can we do to make sure that we maximize the value of the defense dollar that is spent?

Dr. KORB. Well, as I pointed out in that same press conference that got me into all the trouble, was that we had to establish a clear set of priorities. At that time, and my colleagues, including former CIA Director Bill Colby, urged that we give priority to supporting the weapons system we had already bought. Because as you will recall, in the first Reagan Administration we bought an awful lot of hardware, and it was coming into the force whether we liked it or not. So we argued that one ought to support that before you went on to the next generations of weapons systems.

We urged steps then in 1986 that were eventually taken by Secretary Carlucci in late 1987 and early 1988. We said DOD ought not to have a larger force structure than it could support adequately. We knew the amount that was going to be allocated to defense. One always has a pretty good idea, plus or minus a very small percentage, exactly what you are going to get for defense—because you know what the deficit situation is, you know what the taxing level is going to be, you are pretty sure what we are going to spend on social programs—that one ought to design the force you can support adequately.

Senator SASSER. One quick question: Can we afford to support a 600-ship Navy, in your judgment?

Dr. KORB. Well, at the present budget levels, no. As we pointed out in that press conference——

Senator SASSER. We had a situation of a Secretary of the Navy and the Navy pushing hard to build a 600-ship Navy that you and others knew could not be supported in the future.

Dr. KORB. Well, again, going back to that particular situation, the Navy's own studies had shown that it would have required a 3 percent a year real growth in the Navy budget beginning in 1985 to support the 600-ship Navy properly. The Navy budget, like all other service budgets, has declined over the last couple of years in real terms. So what you have is a situation that opens up a gap between where you need to be and where you are likely to be.

I guess the other thing—and this goes back to Secretary McNamara's management style—is that I think it is very important for the Secretary of Defense and his staff to ensure that the services work together so that there is less duplication; that, in fact, the services do not undertake projects which are not in their own best

interest. Seeing Senator Bingaman there reminds me of his courageous fight to stop an issue called strategic home porting, which we tried to stop at the OSD level. We were not successful because, in fact, we were not real players in that decision. I think under Secretary McNamara's management style, the Office of the Secretary of Defense would have had more influence in that particular situation. So you would have less of those projects which do not get the most of the defense dollar.

Senator SASSER. Well, my time is up. I have got some more questions, but I will not ask them. Thank you.

Senator PRYOR. Dr. Korb, years ago—and once again, I am not on the Armed Services Committee, and I know very little about the Department of Defense—I was handling an amendment on the floor. I believe it was 1980 or 1981; I forgot the particular program that I was challenging. The late Senator "Scoop" Jackson became my adversary very quickly, in a flashpoint, and he rose and said, "But the Senator from Arkansas is wrong." He said, "Even the Defense Science Board, our most prestigious group, supports this particular system the Senator is trying to kill." I said, "Oh, I did not know the Defense Science Board was supportive of it." In fact, I did not know what the Defense Science Board was. I had never heard of it. Most people have never heard of it.

I think we appropriate about $1.5 million for the Board. It is a small item in the defense budget under the Office of the Secretary of Defense. I have looked at the Defense Science Board. In fact, in 1983, I was over in the House of Representatives Committee testifying about the Defense Science Board, and what I called a very cozy relationship. I am going to put in the record at the appropriate point the membership of the present Defense Science Board.[1]

Now, to me, as a layman, the Defense Science Board, which receives taxpayers' money, looks to me like the very embodiment of the military industrial complex. Here we have retired generals, admirals, private consultants, Lockheed, Booz, Allen & Hamilton, BDM, Boeing, Martin Marietta, McDonnell-Douglas, Northrup, even representatives of the academic world. We have this entire complex who basically suggests, as I understand, what the spending for DOD should be for in the outcoming years.

Tell me about the Defense Science Board. What is the impact? Is there a conflict of interest?

Dr. KORB. Well, the Defense Science Board does not have a great impact on spending levels. The spending levels are determined outside their purview. What the Defense Science Board does is really work on particular projects that the Secretary of Defense thinks need their expertise, like what are the technology that we need to have, what type of weapons systems should we develop. They have even looked at questions about how to imporve the procurement process. For example, they have done some case studies, particularly on weapons acquisition programs in the private sector, and on successful DOD acquisition projects, and they have tried to apply the lessons.

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[1] See p 117.

So, I do not think they have an impact on how much we spend. Their impact, though, is more on what we spend it on, because if this group in fact endorses, say, a high-technology test bed division, then the Army might move in that direction. Or if they endorse a particular strategy of striking behind the enemy lines in NATO, the so-called follow-on forces attack, that is where their influence would come to bear.

Senator PRYOR. All of the respective branches of the service have a science advisory board which is very similar to the Defense Science Board.

Dr. KORB. That is correct.

Senator PRYOR. How do you get to be on the Defense Science Board? How does one get into the "tent"?

Dr. KORB. Well, you are asked to serve there, in the case of the Office of the Secretary of Defense level, by people in that office as well as in the services. It is an invitation of the Secretary of Defense, that is, usually upon the recommendation of his Science Advisor, his research and engineering person, and in the services it works similarly with the service secretaries.

Senator PRYOR. Do they keep minutes of their meetings?

Dr. KORB. I have never seen minutes published. I do not know the answer to that.

Senator PRYOR. I wonder if they ever vote on matters relative to long-range procurement items. I wonder if the members actually take a vote and, if so, say if someone is in under the "tent" that builds tanks and we want a new tank program, does that person vote, or is that a conflict of interest?

Dr. KORB. Usually what it amounts to is that they issue a report and then that report is presented to the Secretary of Defense and discussed with the Secretary.

Senator PRYOR. It seems to me like a pretty cozy group but we will talk about that later.

You have talked about a manpower ceiling, Dr. Korb. Let me just state that my figures show that since 1981, the number of civilians—I repeat, civilian employees—civilian employees in the Department of Defense have grown by 130,000 individuals. Now, the manpower ceiling did not affect that growth.

Dr. KORB. No, I agree with you. I am making two different points. What would happen is, yes, the ceiling went up each year in many cases. We were allowed more people in the Department of Defense. My point was that if in fact, whatever the number that you give DOD, and you then give them projects to do for which they have funding that are more than that particular ceiling, then they are going to be forced to go outside to get them done.

What I think is, you should manage by money, by saying here is how much money you have to do these jobs, now you figure out whether you are going to use civilians or military, you know, how you want——

Senator PRYOR. What are all these new civilians doing at the Department of Defense, these 130,000? That is the size of Little Rock. [Laughter]

Dr. KORB. Well, I think it was interesting that the number of civilians grew, because people, in talking about the use of consultants, say that Congress gave us a lot more work and so we had to

go outside, without pointing out the fact that the number of civilians in DOD did grow. I had a lot to do with the growth and I do support it, because it enabled us to put military people to their proper uses, that is, get them to do what they should be doing, and stopped using military people for essentially civilian tasks.

Senator PRYOR. Thank you, Dr. Korb.

Senator Bingaman?

Senator BINGAMAN. I will just ask a question on the general issue of waste and inefficiency in our defense budgeting. We have discussed this before, but let me just go over it once more. I gather that you would basically agree with the idea that the major waste that occurs is a result of budgeting for starting programs on the assumption that budgets will increase at a rate that they are never going to increase, and then you have got too many programs and you wind up building very few of anything.

You referred to homeporting, I remember the big fight we had. Essentially, homeporting was a plan to open new bases. We are now going through a major fight here in the Congress to see if we can come up with a way to close some bases.

Those are the inefficiencies, those are the real waste generating actions that I see. I mean, we are talking about large sums of money. Would you agree or disagree with that?

Dr. KORB. No, I would agree that unrealistic budgeting, particularly in recent years, has led to a great deal of waste, because not only do you start more programs than you can support, given the budget levels, but you must each year in a very short period of time make tremendous adjustments to come down to this figure, and when you do that quickly, you are bound to have inefficiencies.

It is not surprising to me that recently the Department of Defense has had to put a freeze on outlays. They were planning on spending so much more, and it becomes very difficult to get down in a short period of time to the level that they have to because of the fiscal situation of this country.

I can remember when I was in the Department of Defense, having to try and come up and defend a base closure package in 1985, at the same time we were opening up new bases. I, myself, saw the illogic of that particular position, and that is why I supported you in your efforts to deal with the——

Senator PRYOR. That sounds like us trying to explain some of our votes sometimes. [Laughter]

Excuse me, Senator Bingaman.

Senator BINGAMAN. I just wanted to make one comment on the Defense Science Board. I know of some of the work they have done which I think has been very useful. The report that they issued on the Sematech was one of the main things we looked at in the Congress in deciding to fund the Sematech effort. I think that has been a good thing. I supported that all along. I think several of their reports have been very useful in getting administration support for things that are farsighted, so I just wanted to comment on that. I know the Chairman was interested in this issue.

Dr. KORB. They do good work. I think you are back to the situation that Senator Levin talked about. We do need them, but we have got to be careful to recognize the situation we put them in,

this potential conflict of interest situation, and guard aginst it to the extent that we can.

Senator BINGAMAN. Thank you, Mr. Chairman.

Senator PRYOR. Thank you, Senator.

Senator Sasser.

Senator SASSER. Dr. Korb, you mentioned a moment ago that one of the things that is needed in the consultant field, if we are to get fair service from consultants for the defense dollars spent, is a code of ethics. Now, am I to understand that there is no code of ethics now with regard to consultants and their relationship with the Department of Defense that employs them?

Dr. KORB. As far as I know, if you or I wanted to set up a defense consulting business, we could do it as long as somebody paid us.

Senator SASSER. I guess I am just wondering how effective would a code of ethics be that would be set up by the consultants themselves or the contractors themselves. We have heard testimony earier this morning that the effort recommended by the Packard Commission to allow the defense contractors to govern themselves with regard to abuse and fraud apparently has just not worked, at least judging from a report that was given to the House Armed Services Committee that indicated that over two-thirds of the defense contractors who were supposed to be setting their own rules and reporting their own infractions had failed to do so.

Can we have much hope that a code of ethics set up by the contractors and the consultants would be effective?

Dr. KORB. I think in the case of contractors who are hired by the companies, then the company should be held accountable for their actions. Certainly that would encourage the company to get these individuals to conform to the codes of ethics that the companies have.

While one can never have complete confidence in any sort of voluntary compliance, I think it is important to recognize that we cannot have one inspector or one auditor for every worker. We do need this self-policing and I am hopeful that industry will even learn more from this present situation. If the allegations that have been made prove to be correct, hopefully they will move aggressively to deal with the people who may have violated their own company's ethics.

Senator SASSER. Well, I gather that you do believe that there is some utility to the whole concept of self-policing on the part of industry?

Dr. KORB. I think you have no other alternative.

Senator SASSER. Well, Mr. Vander Schaaf notes in his testimony that the Department of Defense spent $2.3 billion just for temporary consultant purposes in 1986, $3.8 billion was spent for direct contract consultants. Now, when these temporary contract consultants are employed, to your knowledge, does the Department of Defense ask for full disclosure of other business interests on the part of the consultants to ensure that conflicts of interest do not occur, or that the consultants are not working for other parties or interests who might benefit directly or indirectly from the consultant's employment with the Department of Defense?

Dr. KORB. To the best of my knowledge, they do not, but I am sure that Mr. Vander Schaaf could tell you with much more certainty.

Senator SASSER. Does that red light mean my time is expired?

Senator PRYOR. I am afraid it does, Senator Sasser. If you would like to go another minute, go ahead.

Senator SASSER. Well, I do not want to infringe on the time of other members.

Senator PRYOR. I have just a couple more questions for Dr. Korb.

Here are the contracts, Dr. Korb, with one company, BDM, $228 million worth of DOD contracts. When BDM goes to DOD and says we want to do some work for you, and DOD says all right, here it is—I do not know how that system works, some day we ought to have a hearing on that—at that point, does the Department of Defense ask BDM if they represent any foreign governments?

Dr. KORB. As far as I know, they do not.

Senator PRYOR. Dr. Korb, can BDM or anyone go to work for the Department of Defense who is a convicted felon? Is there anything to prevent that?

Dr. KORB. Not that I know of.

Senator PRYOR. Is there any cross-checking when they go to work for the Department of Defense? I am just choosing them as one consulting firm—by the way, they do not like to be called consultants—everyone is changing their name, no one admits they are consultants, but they are getting $26 billion out of the taxpayers' pockets. Is there any way to check and see if BDM does work not only for DOC and get this $228 million, but for a manufacturer or a defense contractor as well? Is there any way to check that?

Dr. KORB. Again, if the contract is open for competition and they win the competition, as long as you are not on that that list of deferred companies, you win the contract.

I know that there were cases of certain companies that would dispose of hazardous waste improperly. That company would win a contract and we would hear things and we would go the Justice Department and we would say, you know, well, we hear that this group is not good. Justice would say there is nothing here that does it.

You have had cases brought before the Congress, not consultants, but in fact there were companies in which Khadafi had interests would win a DOD contract. Again, unless there was some light that prevented that from happening, you would award the contract to that company.

Senator PRYOR. As of July 1, I think the record should show that Ford Aerospace has just purchased BDM, not only bought all the people and all their contracts, but they bought all their contracts with the Federal system and with the foreign governments that I mentioned earlier in the hearing.

I wanted to talk about some black programs, those programs which are hidden from scrutiny for national security reasons, but I do not think we have time at this point.

Senator Sasser or Senator Bingaman, do you have further questions? We do have another panel, but feel free to ask further question of Dr. Korb. It is a rare opportunity, by the way, to have your expertise, Dr. Korb.

Dr. KORB. Thank you very much, Senator.

Senator BINGAMAN. I have no further questions, Mr. Chairman.

Senator PRYOR. Senator Sasser.

Senator SASSER. I do not have any further questions, Mr. Chairman. I just want to express my appreciation to Dr. Korb for appearing here today and giving us the benefit of his views.

I want to tell you, Dr. Korb, that I share your outrage at the substantial portion of defense dollars that I think have been wasted over the past few years, simply because we have failed to make the hard choices, we failed to establish the proper priorities, we have failed to have the proper oversight over the Department of Defense, over a period of years, and I am aware, as many others are, that there are men and women like you in the Department of Defense today who are working long and hard to see that we do get adequate value for the taxpayers' dollars spent. Unfortunately, there are just not enough of them and there have not been some, in my view, in the top levels of DOD. I do see some hope with Secretary Carlucci there, however.

Thank you.

Senator PRYOR. We have just seen what happens to a brave man who goes out into the private world and speaks his mind. In our next panel, we are going to hear from some people who did not leave DOD and spoke their minds and what happened to them. Dr. Korb, thank you.

Dr. KORB. Thank you very much, Mr. Chairman.

Senator ROTH. Could I ask a couple of questions?

Senator PRYOR. Pardon me, Senator Roth. I was not notified that you came.

Senator ROTH. Actually, I have a question I would like to ask Dr. Korb, not directly related to consultants, but I have long felt in the work that I have done with respect to the Pentagon and acquisition that perhaps what we need is a civilian acquisition professional corps much like the British and the French. In other words, try to put the job of acquisition of advanced weapons into the hands of a group of real professionals. I, in my legislation, proposed a civilian corps but possibly it could be military. The idea would be that these professionals would be well trained, well paid, and that they would look upon this as a career much as your diplomats do in the State Department. Would you have any views on such an approach?

Dr. KORB. Senator, I think you are on the right track. I know that when I worked in the Department, along with my former colleague, Jim Wade, we were very concerned about the lack of professionalism in the so-called procurement area, and anything that could increase the professionalism and the pay I would think certainly would go a long way toward helping ensure that the system performs better.

It is very difficult for a man or woman making $40,000 to $50,000 to sit across the table from somebody who might be making four, five, or six times that amount of money and expect them to police that individual or not to leave the Government and go to work for the company.

Before you came in, we talked about the subject of pay. I support an increase in pay for government workers, particularly those with

these highly valuable skills. So anything we could do to incrase the professionalism and pay the procurement officer people I think would go a long way toward doing it. One might take a look, for example, at the service I am most familiar with, having served in it, the Navy, the engineering duty officer-type getting people like that into the procurement process and making that a much more important career field, just as Congress has done with the joint specialties.

Senator ROTH. Well, it strikes me that we take from the military some pretty good people, who have been combat officers, put them in the procurement business for a few years, expect them to have the qualifications, background and professionalism of being able to deal with people in the private sector who have spent a lifetime. It does seem to me that if you really want to have some professionalism in this whole area, we need to take a hard new look at a radically different approach.

Dr. KORB. I could not agree more, and I think your model may be the joint specialty that was developed by the Congress under the Goldwater-Nickels Act.

Senator ROTH. I would like to talk further with you about that.

Dr. KORB. I would be more than happy to, Senator.

Senator ROTH. Thank you.

Senator BINGAMAN. Mr. Chairman, could I just follow up with one question?

Senator PRYOR. Let me once again apologize to Senator Roth. I am very, very sorry.

Senator ROTH. I know you did not mean it.

Senator PRYOR. Senator Bingaman?

Senator BINGAMAN. Could I follow up with one thing before you dismiss Dr. Korb? We have a bill in which is a step in the direction you are talking about, as I understand it. It is S. 2530, Senators Pryor and Stevens are cosponsors with me on it. It would allow up to 10 pilot projects throughout the Federal Government where there would be in place an alternative personnel system allowing more flexibility.

As we originally proposed it, we were trying to allow the $72,500 ceiling on what could be paid to senior officials of the government to be waived for a small group, but that was not allowed to stay in.

At any rate, we have this thing written in such a way that the Department of Defense would have four of these, a total of 100,000 employees could be covered by this alternative personnel effort. I would be interested in any comments you have on whether that kind of an effort would be helpful. It is about the fourth piece of legislation that I have introduced in an attempt to follow up on the Packard Commission's recommendation for improving the quality of our acquisition personnel and scientists and engineers.

Dr. KORB. Well, I wholeheartedly support efforts in that direction. I think this is kind of an outgrowth of the so-called China Lake experiment which I tried unsuccessfully to get through OP-11 so we could get it up here, and my understanding is that Mr. Packard went right to you people when he started his Commission. I wholeheartedly support that, because even if you cannot raise the ceiling, you do give the managers flexibility to reward and promote the good people along.

This is a little bit off the subject, but I think given the new Federal retirement system you have, which now is portable, you are going to have in a couple of years a real crisis because your fast burners in the Federal service are going to recognize they can leave and they will not have the golden handcuffs any longer, and so anything you can do to keep those people satisfied and rewarded, I think, will be a step in the right direction.

Senator BINGAMAN. Thank you very much.

Senator PRYOR. One final question. Have the Packard Commission recommendations had any impact?

Dr. KORB. Well, I think one of the impacts was the Under Secretary for Acquisition, which I think is very important, to have somebody up at the DOD level——

Senator PRYOR. Well, he did not last very long.

Dr. KORB. The first one did not.

Senator PRYOR. He was there about 6 months and he gave up.

Dr. KORB. Well, I think you had a situation in which the Department was opposed to the bill, so it is not surprising when an agency is opposed to a bill, that it is not going to implement it enthusiastically. I do not think you will see the full impact of the Packard Commission recommendations and the Goldwater-Nichols Act until the next administration.

Senator PRYOR. This is a novel question and I am glad Senator Stevens is not here, because he would accuse me of being partisan. But in your years at the Pentagon and since you have been out in the private sector, have you seen this administration or the Pentagon structure at the highest level support any kind of reform piece of legislation that would help clean this mess up, anything have they supported?

Dr. KORB. Well, let me answer it this way: I think that organizations normally resist changes that they have not thought of or somehow imply that they are not doing their job, so it is not surprising that when something is forced upon you, you do not embrace it enthusiastically. Of course, you have had a very unusual circumstance. You have had in this administration a Secretary of Defense who served longer than any other one but McNamara, you have had your service secretaries stay a long time, so it is an unusual situation, so it is pretty hard to generalize from it.

Senator BINGAMAN. Mr. Chairman, I do think the alternative personnel system I referred to before is being supported by this administration at this point, although we had real problems getting OPM to go along before, as Dr. Korb indicated.

Senator PRYOR. I know they are opposing the Whistleblower Protection Act. I chaired that hearing and they are violently against this legislation. I know in 1982 and 1983, when I introduced legislation to create the Independent Office of Operational Testing, I think I got 8 votes out of 100 the first time around and the next year we passed it. The directorship was vacant for 16 months, and finally when the vacancy was filled, it was filled by a very nice man from McDonnell-Douglas. He had spent all of his career at McDonnell-Douglas. I have never sensed that there was any real support for independent testing operations of our weapons.

Well, we could keep you here all afternnoon. Thank you, Dr. Korb.

Dr. KORB. Thank you very much, Mr. Chairman.

Senator PRYOR. You have rendered a great service.

We will call our next panel. Today we will hear from Col. Jim Burton, Mr. Dick Stubbing, and Mr. Jim Falk.

Colonel Burton is a familiar face and a familiar name. He is a retired Air Force officer who spent 27 years in the military. He spent 22 of those years in weapons acquisition, serving as personal assistant to three top Air Force acquisition executives. He completed his career in the testing and evaluation office of the Secretary of Defense, where he was known for his excellent work on the Bradley fighting vehicle.

Mr. Stubbing is currently a professor of public policy at Duke University. From 1974 to 1981, he was Deputy Chief of National Security Division at the Office of Management and Budget. He is also the author of "The Defense Game." I am not trying to sell any books for you, Mr. Stubbing, because I know that they are all sold out, so I cannot sell any more for you. He will be able to put this situation in perspective for us, against the larger background of the ever-growing defense budget.

Mr. Falk is the manageing partner of Coffey, McGovern & Noel. He represents several defense contractors who have had extensive experience contracting with consultants. Mr. Falk served as Staff Assistant to President Nixon and also Associate Director of the White House Domestic Council under President Ford.

I welcome you three gentlemen this morning. We are going to allow you to read your statement or to make any commnents you so desire. If we could, let us try to utilize the 5-minute rule, and then we can open up for questions.

Colonel Burton.

## TESTIMONY OF COL. JAMES BURTON, U.S. AIR FORCE (RET.)

Colonel BURTON. Thank you, sir. Thank you for the opportunity to address this Subcommittee. My background is as you described. I retired from the Air Force 2 years ago. I am not a consultant. I am not on anyone's payroll. I am 100 percent retired.

I served 27 years in the Air Force. Like you said, 22 of those years were in the acquisition business; the last 14 years I spent in the Pentagon itself. I have seen how the process works from the lowest level down at the laboratory up to the inner circles on the E-ring of the Pentagon, at the highest levels, from the Secretariat of both OSD and the Air Force.

I was also involved in a somewhat controversial issue a couple of years ago, the Bradley fighting vehicle, where I attempted to get some thorough, realistic tests conducted, and those attempts were resisted.

My comments are based upon those experiences. The procurement process, from my view, is a process dominated by three aspects, unbridled advocacy—and I will explain that in a moment—the presence of large sums of money, and, contrary to what Mr. Korb said, in my opinion, a desire by senior officials for no serious checks and balances.

There are checks and balances called for, there are provisions, there are review boards, but in my view most of them are pro

forma. A set of serious checks and balances would create information and decisions which would place major big ticket items and programs in jeopardy. That seldom ever occurs, because when it begins to occur, people come out of the woodwork, the chief executive officers parade into the front office, the calls from the Congressmen and Senators who have work on that program in their district, pressures mount, and so after a while people do not even attempt serious checks and balances, in my view.

Now, what do I mean by unbridled advocacy? From top to bottom in the organization, briefings are constructed with advocacy in mind, letters are written with advocacy in mind, tests are constructed to make weapons systems look good, rather than to see what they can actually do, everything is shaped with advocacy in mind. The idea is to get a program approved, get the funding approved, and once it is approved do what you have to do to maintain that flow of funds to the contractor. This is the guiding emphasis and thrust for almost all of the activities, and anyone who attempts to bring a devil's advocacy role to the table in this kind of an environment is treated like the plague. I can attest to that from personal experience.

This current scandal—and I do believe it is a scandal—all I know about the details is what I read in the paper—unfortunately, I know some of the people involved, so I will not comment on this situation—but I place this scandal, this apparent scandal, in the same category as all of the others that have come out of the procurement process over the last five or six years.

We have had $600 toilet seats, $400 hammers, $7,000 coffee pots, we have an incestuous situation, a revolving door between senior military and civilian officials, back and forth, in and out of the buildings, to and from industry. We have acquisition or procurement strategies which intentionally place subcontracts in almost every State in the Union, not to improve the procurement of the weapons system, but simply to build a constituency to prevent that program from being cancelled if any unflattering test results or cost data shows up.

We also have a steady stream of weapons which in my view have either not been tested thoroughly and adequately or, on those rare occasions when you can get a thorough test, we have had decisions to go ahead and buy, regardless of poor test results.

It is a situation that is ripe in my mind for corruption, and to me the business, as it stands right now, is a dirty, rotten business, as viewed from the inside. There are times when I wonder if it has anything to do with national defense. It acts more like a WPA project. There is a strong need to just take the whole system and turn it upside-down and shake it, and shake it real good.

The consultant problem is only one part of the whole problem. In my view, the whole process is corrupt, and so what do you do about it? What is the solution?

I do not think additional reform legislation is going to change things. You tried that in 1983. You passed legislation which was intended to bring checks and balances to this process, 91 to 5 in the Senate and unanimous in the House. You set up an independent operational tester on the staff of the Secretary of Defense.

Have you gotten independent testing? You have not. In my view, what you have gotten is someone who has come to the table with the same industrial perspective as the chief procurement officer at the table. If you look back at all of the acquisition executives over the past many years, they all come from industry, so their interest and their perspective is an industrial perspective, and the one person you are supposed to have at the table to represent checks and balances, who is supposed to run some tests to see if the stuff that is being built works and does what they claim and promise it will do, the chief tester you have at the table also comes from the same industry. So you have in essence industry checking itself, and this is wrong. This is wrong.

There was an attempt, an admirable attempt, by the Congress to try to put checks and balances in the system, but it did not work, in my view.

You mentioned BDM. I believe if you look at that list, you will see that BDM Corporation, I believe, has a contract with this independent operational tester to help him critically examine test results and test plans of the services. I think if you look down that list, you will find that BDM also helps the services perform the same function. You cannot find the street, let alone which side of the street, people are on at times.

To me, the only way to improve this situation, the only way it is going to change is if you put good people in responsible positions, people of integrity, people of competence and you hold them responsible for their actions.

You can reconvene the Packard Commissions, Mr. Carlucci can come up with another 32 procurement initiatives like he did 6 years ago, and all of these things are not going to change anything.

It is a people problem and if you do not put good people in there, you can expect more scandals like this as time goes on.

Thank you.

Senator PRYOR. Thank you, Colonel Burton.

Mr. Stubbing.

Mr. STUBBING. Thank you, Mr. Chairman.

Senator PRYOR. What we are going to do, if it is all right with my colleagues, is let each witness make his statement and then we will open for questions, and we may very well have a vote in the next 10 minutes. We will make the statements and then we will ask the questions.

## TESTIMONY OF RICHARD STUBBING, PRACTICES AND PUBLIC POLICY STUDIES, DEPARTMENT OF PUBLIC POLICY AND PUBLIC AFFAIRS, DUKE UNIVERSITY

Mr. STUBBING. Defense consulting is big business and from my perspective of 20 years in government this is not a new problem of looking at the consultants and what they are all about. I can remember reports in the sixties and seventies, and it is always the problem of separating the wheat from the chaff. There are good consultants and there are not so good.

The current scandal, is symptomatic of much more serious problems which pervade in the protective cocoon of defense contracting.

There are, frankly, too many contractors, too many regulations, too little real competition, too many consultants, too many lawyers—my apologies to my colleague here—too many powerful interest opposed to change.

Robert Costello, the acquisition head in the Pentagon has been quoted that the inefficiencies in our procurement practices cost in the neighborhood of $50 billion each year. We are looking at Federal budget deficits of somewhere around $150 billion—of that $50 billion is not getting us anything in defenses. It does not seem to worry people so much.

The current scandal, as Colonel Burton suggests and I feel also, is a pimple on a large, badly infected sore which needs to be treated. The underlying problems that I see that need to be addressed are four:

Defense is awash in money—too much, too fast. I am a budgeter. I was there in 1981. The defense buildup was handled badly. There has been a managerial vacuum in defense in recent years. The incentives to the people in defense and to the contractors, which I think is the crux of change, are weak, often irrational and perverse at times.

As Mr. Korb suggested a few minutes ago, there has been a steady degradation in the prestige of public service and public servants. This is not a new thing. It has been going on, I would say, for something close to 15 years, under Republican and Democratic administrations.

Finger-pointing at the public service and critiquing them in a harsh way is not exactly the way to endear them and to build up their confidence. Add to that this consultant kind of thing, which makes public servants not feel good about what they are going, and they see these consultants, as we said earlier—and I would concur from my own experience—consultants sitting next to them on different projects or doing the work that, say, a civil servant has been doing, earning twice the salary, it is easy to see the motivation to move out of the public sector and into this big pot of gold called consulting.

Finally, there has been an erosion, as M. Korb also suggested, in the ethical and moral standards affecting defense matters. They are all obvious to us—contracting, revolving door, old buddy networks, and for yourselves, one set of rules for defense, another for Members of Congress in terms of jobs and honoraria and other controls. There are perception problems, and that is important, the perception of conflict of interest is just as important as the real conflict of interest, and it is happening all the time.

The bottom line I see is the public is losing faith in its defense efforts. Its government and the defense world certainly is seen as inept and corrupt.

Solutions: I offer three. One, keep a tight lid on the total defense budget level. You have been doing that for the last several years and I believe that it is starting to have some effect. These huge, wasteful practices that we see have got to be corralled.

In terms of the consulting world, a two-barrel proposal: Shrink the dollars for people doing consulting work directly for the government but I know from experience that defense is quite clever at evading that and they will know just how to get around it.

Second, consultants to the defense contractors. The greatest problem in defense contracting is excessive overhead. They are so loaded with overhead, their incentives to do anything about these consultants or other kinds of strange overhead that they incur is almost nil. The government allowed them last year's overhead level plus an increase every year. It is bad. We need to impose budgetary austerity and, secondarily, tighter managerial controls.

Next, we have got to change the incentives to government employees and to the contractor personnel. We have got to restore pride in government. We are losing potentially real good people.

We have got to reward people for doing smart things like economies in contracting. There are none now. If you do economical things, you often are called on the carpet if you work for the government, and contractors, if they waste money and blow up a system or two, they get rewarded by getting the money to fix it and then get the profits on that. We have got to do something that changes the incentives within government and we have got to do more, as you have already discussed, to constrain the revolving door. We have got to put tighter clamps on that.

The third area, a fresh idea that I offer is that we do need a code of ethics involving contracting. I would suggest a bipartisan commission to set up a new code of ethics for defense, composed of folks in the Executive and Legislative Branches, a commission that would look at these problems and it would be distinguished people who have been there, not current people, who know what is going on and ask them to come up with a code of ethics that they can present to the new President in March or April of next year, in his first months, to help the President with some specific recommendations.

With these steps, I will suggest that we might be able to eliminate many of the current wasteful practices, rebuild the image of the public service, and, most importantly, begin to restore public faith in our defense effort.

Thank you.

Senator PRYOR. Thank you, Mr. Stubbing.

We will have questions in a moment.

Mr. Falk.

## TESTIMONY OF JAMES H. FALK, OF COFFEY, McGOVERN & NOEL, LTD.

Mr. FALK. Thank you, Mr. Chairman.

Mr. Chairman, I think at the outset that I have given the Committee some remarks and, rather than go back through those remarks in their entirety, I think that I am certain that each of you have them and that those who need them have them, and I would like to depart from those remarks and just talk about some of the issues specifically.

Senator PRYOR. We will put your full statement in the record, Mr. Falk.[1]

Mr. FALK. I share your concern, Senator Pryor, about the oversight functions this Committee is performing. I share Senator Ste-

[1] See p. 73.

vens' concern about avoiding partisanship and protecting individuals' rights. My remarks will not prejudice any individual's rights. In my remarks, I will not try to cause any partisan concerns. I share Senator Stevens' concern.

Senator Levin is concerned about conflict of interest problems, and I share his concern. Disclosure is the key. I share Senator Sasser's concerns about voluntary disclosure and self-governance. I think the voluntary disclosure and self-governance system is flawed legally and flawed from a policy perspective.

Senator Bingaman set out the context of the problem. Senator Roth is to be complimented for looking at the larger procurement reforms issues.

My concerns, however, are quite different from the concerns voiced by the other two gentlemen that I am at the table with today. In fact, I disagree substantially with many of their comments, and I will do so point by point.

My concern is the state of the law. Today, the law adequately in my judgment governs the conduct of military officers and others in the military service. Today, the law adequately governs the conduct of the civilian employees of government. Today, I believe the law adequately governs the conduct of contractors. But there is a gap in the law today that is as wide as the Nation, from coast to coast, and that is the gap with respect to the coverage of the law as it applies to consultants.

People can do things in the name of being a consultant that they cannot legally do in any other capacity. If an employee of a company is driving that company's car and injures someone, the company is liable under the doctrines of well-established law in the United States. The employer is reponsible for the acts, negligence and omissions of his employees.

Companies are not liable for the acts, omissions and negligence of their consultants, and therefore the consultants have become what I consider and what I call in my prepared statement "free agents." They are free to work both sides of the street, they are free to give deniablility to those who hire them, whether it be government on the one hand or whether it be the private sector on the other hand.

I think that the free agency problem and the gap in the law with respect to the coverage of consultants by the statutes is one of our major problems.

With respect to the specific statutes: The primary law that regulates post-employmet conflits, is found in title 18, U.S. Code 207, as I say on page 3 of my remarks, however, the law and its penalties only apply if you become a direct agent or employee of a defense supplier after your government service, or if you act as an attorney for that supplier. It does not cover the activities of a person who, after government service, in a procurement function, establishes or joins a consulting firm which in turn has contractual relations with defense suppliers.

Consultants should not be excluded from the coverage of this law and its criminal sanctions. I would recommend an amendment which would explicitly place independent consultants within the reach of this statute.

Presently, title 10 of the U.S. Code, section 2397, requires that consultants to major defense suppliers who represent their interests before the Department of Defense must report annually their DOD-related employment for up to 4 years.

However, as a recent GAO report states, the law is not working. Moreover, the failure to comply with the present disclosure requirements is punished by a mere administrative penalty, a noncriminal penalty of not more than $10,000, to be imposed at the discretion of the Secretary of Defense.

Originally, this penalty was a criminal sanction and it carried a fine of not more than $1,000 or imprisonment for not more than 6 months, or both. It has been reduced. I think there is enough criticism here to go around, and I think the Congress deserves some of that criticism.

Two of the statutes primarily designed to regulate the conduct of consultants that carry criminal penalties have been repealed and replaced with statutes which carry only an administrative sanction.

Thank you, Mr. Chairman. I see that the red light is on and I will terminate my remarks.

Senator PRYOR. Thank you, Mr. Falk.

I am going to pass to Senator Stevens at this point if he would like to begin a series of questions.

Senator STEVENS. Senator Roth was here before me, if I may yield to him.

Senator PRYOR. Fine, and I will return in one moment.

Senator ROTH. Colonel Burton, you made the point that it is a question of getting the right people in the job. Is that the real key to the problem we face in military procurement?

Colonel BURTON. I believe it is, yes, sir. I believe that it is the only solution. It is the only solution, because we have seen too many reforms or changes to the mechanics and the structure of the process. We have seen reorganizations, we have seen title changes of positions, we have seen commissions, we have seen legislation, and we still keep having these serious problems and it all comes down, in my mind, to the quality and the competency and the integrity of the people we place in charge.

For their actions and behavior, they have to be held, in my view, far more accountable than they are.

Senator ROTH. I agree very strongly with this statement. I think one of my concerns is every time we have a scandal, we build more regulation, more red tape, in a step to do something about a problem, but often complicate it even more and really do not end up bringing about true reform. Would you agree with that?

Colonel BURTON. I agree, because all of those things deal with the symptoms of the problem and the problems almost always come down to the behavior of the people in the process, and if they behave like scoundrels, you are going to have scandals.

Senator ROTH. I would like to go back to the suggestion I was making a few minutes ago, that part of the problem is that we need a professional—as I said earlier, I proposed civilian, but perhaps it could be military—a professional group to take over the acquisition of the more complicated weapons systems and equipment.

It is my thought that we could use as a model what goes on in, I believe, Great Britain and France, which try to attract long-term people who want to make this kind of procurement a professional career, not a stepping stone in a military career. I am not making criticisms, but I think we ask an impossible task of many of our military people who have spent 20 or 25 years in an operational-type command or job, then push all of a sudden into procurement, which is an extraordinarily complex management and then move them out 4 or 8 years later.

Would you think there would be merit to try to develop this kind of professional corps that would take over acquisitions?

Colonel BURTON. The idea does have merit. I think if something like that were implemented, it may be in a short time improve the situation, but I guarantee you, that after the people involved in this whole industry get to understand the ins and outs of how that system works, we will be right back into the same kind of problem.

Hitler, Stalin and Churchill, all three went to that system you are talking about before World War II and they proved——

Senator ROTH. Nothing we do is going to be foolproof. The question is whether it will move us ahead, even for a limited period of years. Whatever system, where you have a lot of money, you are always going to have a few crooks who try to exploit it.

What I am trying to suggest is part of the problem here is that not only the temporary people we bring in as Under Secretaries, but if we had a cadre of professional people, say the likes of diplomats, who on the whole are pretty able, qualified people. If we could attract that kind of people, whether in the military or civilian, who became experts and were paid well—I think that is part of the problem, you canot attract them—would you see that as an idea worth exploring? I would ask all three of you.

Colonel BURTON. I think it is an idea worth exploring, but along with that, you have to set up a system of rewards and punishments inside that system that will permit those professional individuals to operate in a fairly objective, unpressured manner, so that the squeeze is not put on them, to come up with the preferred answer on which weapon to buy or which direction to proceed, because it does not matter whether they work in a specialized procurement agency or in the Pentagon now, those are the kinds of pressures that act on their everyday life.

Senator ROTH. Mr. Stubbing.

Mr. STUBBING. The professionalism is a desirable objective and we should definitely try and get more. It could be military and civilian in my book, but definitely dedicated to this acquisition world which is, as you say, quite complicated.

The other thing, I will agree with Colonel Burton, is that we must have top-down support for what they are doing. That has not been there too often, so that in our choice for the next Secretary of Defense, it has to be somebody who understands defense, understands what it needs to clean up some of the problems we are looking at, and then, working with the professionals, that is the way to get it implemented.

Senator ROTH. Mr. Falk.

Mr. FALK. I think, Senator Roth, the idea has great merit. I think, however, that it should not be as so many approaches we

have attempted to take have been, mixed to please everybody. That is, if a professional corps of procurement professionals is to be established in government, it should not be a mixture of military and civilian. It seems to me it should be a civilian group, rather than a military group that is going to rotate on different tours of duty.

Senator ROTH. Well, I strongly agree with that.

Mr. FALK. If it is a civilian professional procurement corps, I think that could only be beneficial.

Senator ROTH. I think part of the problem is where people flow in and flow out, rather then stay in it as a career.

Mr. FALK. Precisely.

Senator ROTH. My time is up. I have further questions for later.

Senator PRYOR. I have been out of the room momentarily. Whose time is it? Senator Bingaman.

Senator BINGAMAN. Thank you, Mr. Chairman.

Mr. Falk, let me ask you a couple of questions about your recommendations. I think they are very interesting and useful. Your reading of 18 U.S. Code, section 207, leads you to conclude that consultants working for consulting firms, people working for consulting firms that have contracts with DOD are not in fact covered by the revolving door provision that we put into law, because they are not direct agents or employees of a defense contractor or supplier.

Mr. FALK. That is correct.

Senator BINGAMAN. So you think we need to pass a law saying that for purposes of that revolving door law, we need to clarify that any persons who works for a firm that contracts with DOD should be deemed a direct agent or employee of DOD for purposes of that post-employment prohibition?

Mr. FALK. Yes, Senator. Very simply, I think the problem with 18, 207 is not the thrust of the statute but the problem is simply the omssion as it pertains to consultants.

Senator BINGAMAN. Then, going on, you also indicate that title 10 U.S. Code 2397 should be amended to provide that consultants are required to make the same disclosures, regardless of what rank or grade they have had previously or what position in the civilian service they have had previously, is that correct?

Mr. FALK. Yes, Senator, I believe that is the only way the law can be made equally applicable to all people. I think that we cannot be discriminatory in the passing of laws. We have to keep in mind the equal application of the laws, and I think that it should be applicable to all.

But I think the biggest problem with that section is that what has happened is that a system has been created in which the registration actually occurs in the Office of the Secretary of Defense. The Secretary of Defense keeps the register and is to make a report to you and Congress each year—by April 1.

We do not know how that is going to work, because there has not yet been a full year of operation, so they are not yet required to report. But putting the list of consultants and who they represent on a piece of paper in the Office of the Secretary of Defense is like putting it in Fort Knox. That does not assure public access. It ought to be as accessible as the lobbying reports of lobbyists. It ought to be as accessible as the FEC reports that people have to file. It ought to be some place where it is publicly available for

people to look at, so that you know and everyone else knows that this guy is wearing a green shirt today and he wore a blue one yesterday, and he is also a consultant to a government agency at the same time.

Senator BINGAMAN. Let me ask how well you think we are organized to monitor and actually implement the law that we have, or that you recommend that we should have here. I guess I am hearing two things.

You are suggesting we make some changes in the law. Senator Levin's testimony earlier was basically that the present law is not being followed, the Federal Advisory Committee Act is not being followed, and had it been followed, some of the problems that occurred at least in the example he cited would have been avoided.

To what extent do you think it is a failure to follow the law? To what extent do you think we need changes?

Mr. FALK. Well, I think Senator Levin's comments were very well taken, but they were very specific and specifically related to a situation involving an organization that he thinks really ought to be treated as an advisory committee, it looks like an advisory committee, it walks like one, it quacks like one, yet it calls itself something other than one. I think that is a definition problem and it can be resolved very easily.

I think that the bigger point I heard Senator Levin making in terms of this situation is that it is a whole lot more profitable to be a consultant than it is to be an employee, and the consultants on that so-called noncommission are getting $1,000 a day, whereas if they had been members of a properly appointed advisory commission, they could only get $250 a day. So it is more profitable for them to not be on an advisory committee and not be subject to your oversight and not be subject to having to answer the questions of this Committee.

Senator BINGAMAN. So your thought is that we need a change in the law to solve the problem that he was identifying?

Mr. FALK. I believe so, yes.

Senator BINGAMAN. To ensure that anyone who walks and talks and quacks like an advisory committee in fact gets paid like one and is accountable like an advisory committee?

Mr. FALK. Yes, sir.

Senator BINGAMAN. Those are all the questions I have, Mr. Chairman.

Senator PRYOR. Senator Stevens.

Senator STEVENS. Colonel Burton, as I understand the situation that exists today, this scandal we all talk about involves people who were consultants to industry, hired by industry as consultants, who went to employees of the Department of Defense, primarily the Navy, and bribed them to give up the information concerning proprietary information that had been delivered by other portions of the industry in connection with bids.

Now, you made a rather good statement, I think, concerning the problems of the consulting process itself, but do you view that which I just described as being part of the same process you were talking about in terms of the inability of government itself to provide a system to manage procurement?

Colonel BURTON. Yes. If in fact these events occurred—I do not know the details of these investigations—but if the things I read in the paper are anywhere near true, then we have people in the process whose integrity is questionable, and I do believe that these kinds of things cannot occur unless other people at higher levels in the process conduct themselves such that it is permitted to occur.

Senator STEVENS. Colonel, you remember the recent Walker case, do you not, the fellow in the Navy who sold to the Russians our very highest classfied secrets? You are familiar with that?

Colonel BURTON. Yes.

Senator STEVENS. It probably, in my judgment, cost the government of the United States $100 billion to replace that system or systems. Now, that was a personal defect again, was it not?

Colonel BURTON. Yes, sir.

Senator STEVENS. He was subject to bribery. He was bribed by the Soviets, as I understand it.

Colonel BURTON. Correct.

Senator STEVENS. This current situation involves people who are alleged to have been bribed by a process of industrial espionage, but you seem to classify that as failure of the consultant process within the Department of Defense.

Colonel BURTON. No, that is not correct, sir, not a failure of the consultant process. I think that is another symptom of the entire procurement process that is corrupt. That is one more aspect of the corruption of the whole procurement process.

Senator STEVENS. Now, we apparently have evidence and are reviewing it now that there are several people in this process that were corrupt.

Colonel BURTON. Yes, sir.

Senator STEVENS. But you say the whole system is corrupt. You were part of it for 20 years.

Colonel BURTON. Yes, sir, but the system is made up of the people that serve in it, and the point I am trying to make is that——

Senator STEVENS. Well, you are not corrupt, and I am not trying to be offensive, but there are a lot of good people over there in that system, are there not?

Colonel BURTON. There are a lot of good people in that system whose intentions are good, and quite often when they try to do what is good, the systems of rewards and punishments is such that they will only make a token effort to be good, and it is much more comfortable to go along with what the boss wants and what the crowd wants and everybody goes back to sleep and gets very comfortable. That is what I meant when I was talking about no serious checks and balances. There are good people, but there are an awful lot of insecure people who cannot stand the pressure of——

Senator STEVENS. How many corrupt people? Are there, really?

Colonel BURTON. Sir, I have seen programs managers lie to review boards, I have seen general officers lie to civilians, I have seen civilians lie to generals, and I have seen them both lie to Congress and the press. I have seen corrupt people all over the place, and quite often they are not held accountable for their actions.

Senator STEVENS. Well, a system is there to hold them accountable and we will hear from the Inspector General. We gave the De-

partment of Defense taxpayers' money to get 1,000 new auditors. Did you know that? The evidence that we are seeing now is the result of the process that we put into effect to try to find corruption, to try to find those who are violating the system, to try to make the system work, and the system of inspector generals itself was part of that concept.

I think you were around, Mr. Stubbing, at the time we put that into effect, the whole concept of inspector generals.

My time is about up. Mr. Falk, I am very interested in your comment. I did not realize that we had changed that penalty, and I think your contribution here this morning is really immense. As an ex-prosecuting attorney, I believe there is a great deterrent effect in having strong criminal sanctions in those laws which ought to protect the public from events such as we are witnessing now, and I will follow up on your comments and be back in touch with you.

Thank you, Mr. Chairman.

Senator PRYOR. Thank you, Senator Stevens.

Colonel Burton, we have discussed one book this morning, "The Defense Game," written by Mr. Stubbing. It is sold out. Let me just mention another book that has recently been published by an author named Nick Kotz. It is called "The Wild Blue Yonder: A 30-Year History of the B-1 Bomber." It is extremely educational. It is very thought-provoking, I might say.

In this book, Mr. Kotz talks about the rewards system in the process and, to a degree, the punishment system. Are you one, because you sort of blew the whistle on the Bradley vehicle, who enjoyed the rewards of the system or suffered the punishment of the system?

Colonel BURTON. Senator, first of all, I do not consider myself a whistleblower. I was just trying to do my job to get some thorough tests conducted and some decisions made on the design of that vehicle, based upon actual test data, not promises of technologists.

I made a conscious choice to take on the system. I thought it out ahead of time. I knew what the consequences would be. I knew how the system would react to me, as I had seen it time and time again react to other people, but I made a conscious choice to accept all of that, so I have no complaints. I have no complaints whatsoever on the actions.

There was a 2-year first-class cat fight, and when it was over I did what I could and I am proud to say, as a result of all that, the Bradley vehicle has been changed and redesigned, in the middle of production and it is going to be a safer vehicle and I am very proud of that.

Senator PRYOR. But you are no longer in the military service. What happened?

Colonel BURTON. I retired and I am retired-retired, completely.

Senator PRYOR. Were you harassed in any way?

Colonel BURTON. Senator, like I say, when you make a conscious choice to take on the system, you have to be prepared for harassment, threats, attempts to remove you from the position, attempts to censure your testimony, discredit you, all kinds of things, all kinds of things are done to get you to stop making a problem which could cause an interruption of the flow of money in a program,

"This program is too important to us to place it in jeopardy." I personally believe that there is not a weapons system on the books that this country has to have for its national security, but I think we do have to have a procurement process that has integrity, and right now in my view the process does not have it.

Senator PRYOR. Thank you, Colonel.

Mr. Falk, in your prepared statement, which I read last night and found very, very instructive, you stated that oftentimes consultants identify the weapons that we need to procure. Is this correct?

Do we have a situation today in which consulting firms or individuals identify the weapons systems we need and then also work for the contractor that ultimately produces those weapons?

Mr. FALK. Yes, Senator, I believe we do. I have seen that happen a couple of times, and it has to do primarily or it develops primarily with someone in government who perhaps came to government from the defense industry, implementing or attempting to have DOD implement an idea that was his pet idea. When it is about to be implemented, the person leaves DOD and goes back to work for the same company that he was working for before, or a different company that ends up being a bidder on the procurement when the system is put on the street for bid. That is a real problem.

He generates the idea, he goes into government, he romances government with the idea, the government then says okay, we are going to buy it, and then he goes to work for someone in the private sector and says we are the only ones that can sell it to you because we are the ones that understand your requirement because we really designed it for you while I was in government. That is a problem.

Mr. PRYOR. All right. The next question—pardon me, Mr. Falk, go ahead.

Mr. FALK. Senator, I did not mean to interrupt you. I was thinking about the further part of my answer to both your question and Senator Stevens' question. I prepared a list of statutes which I think had been given to you along with the prepared remarks, that is current law with criminal penalties which do apply to consultants, and I agree with the thrust of what Senator Stevens was saying.

If people are lying and cheating and stealing, we have got plenty of laws on the books to take care of it. A bribery case is a bribery case is a bribery case, and we do not need a new bribery statute to root out bribery.

Then I have given you a second page, which is current laws which do not reach consultants or have been repealed or amended or are not adequately enforced.

Senator PRYOR. I would like to thank you, Mr. Falk, for making mention or noticing legislation that I introduced in, I guess 1980 or 1981—along in there, and that was a registration requirement for consultants.

Mr. FALK. It is a fine piece of legislation. The only problem is that it has not been—I think it is still in committee. I am not sure where, but I know that our staff was looking at it and found that statute or found the bill that you had introduced and our major concern was that nothing had been done with it.

Senator PRYOR. That point of the legislation, if I might refresh my colleagues, was to get the consultant or the outside contractor to register when they got a DOD contract, and then we could cross-check that same individual or the same company with the defense contracting firm to see if both sides of the street were actually being played.

Now, a question to the panel——

Mr. FALK. I just think that is a very worthy piece of legislation that is unfortunately a couple of years ahead of its time.

Senator PRYOR. I am going to dust that off again and relook at it and maybe I can get my colleagues to assist us in working together on this proposal.

Now, a question for the panel: Mr. Stubbing, you were with OMB for a long time; you spent 22 years in acquisition, Colonel Burton; Mr. Falk is a very well known lawyer who represents defense contractors. How many weapons systems have we seen cancelled in the last, say, 15 years—I will make this nonpartisan—15 years or so?

The Maverick is still running and it is still getting money, and BIGEYE is still getting money. Have we ever seen another one, a big one cancelled? What happens when we cancel a program?

Mr. STUBBING. Well, a couple of things happen that are worth at least understanding, that no one loses. That is one of the rules. You have to understand the rules of the defense acquisition process. One of them is no one ever loses any money, no contractor loses money. So when a program is cancelled——

Senator STEVENS. That used to be the case, but the amendment that I put in the law 2 years ago says they have to come up with up-front money, and they lose if they are not successful, so that is not totally the case any longer.

Mr. STUBBING. I was just speaking, Senator, to when they terminated. When a progam is terminated, no one can lose—what happens is the contracting team that is not able to perform is able to get out of the program that is being terminated and make a sizable profit on it. That is just one of the rules, one of the ways we operate in the defense business.

So there should be, at least in the private sector, when you do not make it, you lose money. That incentive is not there in defense contracting.

Mr. FALK. I would simply like to note my disagreement with that statement. I think that is a glittering generality that sounds good, but "it just ain't true." All you have to do is check the bankruptcy records of the Federal courts of this country for the number of defense contractors that are now in bankruptcy or in chapter 11, because they were in a situation where the competition was so stiff that they bid a project that they simply could not make a profit on, and they ended up going under.

We have shipbuilders in the South, we have shipbuilders in the West, we have shipbuilders in the Northeast who are in chapter 11 because of that very intense competition.

Mr. STUBBING. I will amend my statement to say I am thinking of the major contractors. I know them well. You are right, there are small ones that went under. None of the major contractors have suffered.

Mr. FALK. Well, Todd Shipbuilding "ain't small."

Colonel BURTON. I would like to answer your question also.

I touched upon it earlier. When there is an indication that a program is going to be cancelled or severely constrained, where the dollars involved are large, within seconds the chief executive officers of each of the contractors involved and subcontractors and vendors are pounding the halls of the Pentagon, putting pressure on the acquisition executives to revisit their decision, their proposed decision. The phone rings off the hook from Congressmen who have work in their district. It becomes a jobs issue, not a weapons systems issue, and usually the jobs issue, preserving the smooth flowing production line usually wins out. So decisions to cancel may be initially tried, but more often than not they get reversed.

Senator PRYOR. I know my time is expired, but one quick question and then I am going to yield.

Colonel Burton, who is testing our weapons today? Who is performing our operations testing?

Colonel BURTON. Each service has an independent operational test command that is independent of their acquisition community. And on the Secretary of Defense's staff, because of your legislation, there is also an independent operational tester there who was envisoned, if I understood the thrust and intent of that legislation, to be the gatekeeper, the serious checks and balancer, the black hat guy at the table, because a lot of other people sit at the table with a great big rubber approved stamp in one hand and a green flag to wave the programs through in the other. He was supposed to at least bring into the room the disapproved stamp on occasion.

I am sorry to say that right now, because of the current situation, the individual involved who has the position, has not been the junkyard dog that I think the legislation has intended. He provides generous support to the big ticket items. You seldom ever see critical damaging testimony on performance on this stuff until after it has already come out in the press, and——

Senator PRYOR. What role do consultants play in testing weapons?

Colonel BURTON. What role do they play?

Senator PRYOR. Yes.

Colonel BURTON. Oh, they play tremendous roles. Quite often, they help structure tests, they help analyze test results for both the people conducting the tests and the people who are supposed to be the independent oversight group, and quite often it winds up being the same people.

Senator PRYOR. My time is up.

Senator Roth or Senator Stevens.

Senator STEVENS. Two quick comments. One is that we have been through a process of trying to deal with some of these things. I remember that we had a provision in the Defense Appropriations bill in 1986, I put it there, the Senate adopted it and it said no one reimbursed from taxpayers' funds from the Defense Appropriations could be paid in excess of the Cabinet level. If they want to pay them in excess of that, they had to take it from their own profits. The House objected and that was dropped.

We have a provision still in the law, it is under attack in the bill that is on the floor now, that says that travel costs of people who have contracts with the Federal Government in defense cannot exceed the amount that can be paid under the Federal travel regulations to Federal employees.

We have tried to put some parameters on these things, and I think we tried to put some parameters under the Mattingly approach on consultants themselves, but we have not been successful as far as I can see in any way.

It has been my impression that the consulting contracts to a certain extent derive from the fact that neither the Congress nor the Department of Defense wants to put money into the bricks and mortar to build entities that can test some of these new systems.

I remember that we had a considerable fight over the SDI testing facility that we put up out in Colorado. That was knocked out twice because people said we could contract out that work and we did not have to put money into bricks and mortar.

Now, what you are really saying as I understand you, is that we ought to have this testing, this consultant work done in-house. Now, is that not in effect going to result in a considerable increase in cost, to have these things done in-house? These same entities test for the private sector in other non-defense areas. They test for foreign entities, and they can also test for the Department of Defense. Shouldn't we be able to get the testing done and the consulting done by entities that are in existence from other portions of the economic community to deal with these problems.

Mr. STUBBING. Yes, I would suggest that if we look at the life cycle cost of a weapons system, any weapon, and call it a dollar, the money we spend on the first 5 or 10 cents, which is the development and testing, no matter what we pay, if we do good testing, has a tremendous savings to the country, it adds to our national security because we will know up front that we are getting a system that does or does not do what it is supposed to, and not be stacked up on the flight line not working, as often happens.

So the money we spend in that early phase on testing, I would argue that the more money we could spend, well spent in that area saves the taxpayer a bundle over time.

Senator STEVENS. Even if it is not in-house money?

Mr. STUBBING. Yes, sir. We can do it as long as it is well done. I have no problem. Colonel Burton might have some comments on that.

Colonel BURTON. I do. I look at these two or three million people that are in the Department of Defense in one form or another and I notice that we have all kinds of laboratories, we have all kinds of engineers, we have all kinds of scientists, we have all kinds of mathematicians and analysts, we have all kinds of people whose background and experience are geared to fit a procurement process.

It makes me wonder why in the world we need to go to consultants for anything. I mean what is it that they bring to the table other than knowledge of people, which I consider—well, what technical expertise and assistance do they really bring to the table? What purpose do they really serve?

Senator PRYOR. If I could give an example right here, I think it illustrates what Colonel Burton is talking about. Only three or four weeks ago the Air Force granted a contract for $154,000 to a little firm in Arlington, Virginia, to prepare an Air Force accomplishments manual. That is almost as much as the President of the United States makes. Now, why could not someone in the Air Force have prepared such a manual?

That is one very small contract. We are talking about thousands of contracts just like that that are being just poured out to these firms on a daily basis.

Mr. Falk.

Mr. FALK. Senator, I think that one of the very real reasons for that problem existing today is that when you impose a manpower ceiling on the government, say, to DOD, you only get this many people. You say to them, on the other hand, you have got this many program dollars and we want you to accomplish those objectives, they are then going to have to spend those program dollars outside the agency if they do not have the people inside to do it, and they will use consulting services because consulting contracts are easier to negotiate, the people who are the consultants find them advantageous because they get higher rates of pay than they were if they were an employee, they get temporary status, they do not have to be a government employee, and all kinds of other reasons suggest why it is good for both sides of the negotiation in a negotiation over a consulting agreement.

But the problem is that we cannot lump all of these things together. We cannot say independent testing is to be defined as something to be done on a consulting agreement. We need to have independent testing laboratory capability in the United States to be able to test for PCB's or hazardous substances or various other kinds of things. Let us not call those laboratories consultants. They are testing labs.

Senator PRYOR. Senator Roth?

Senator ROTH. Thank you, Mr. Chairman.

Going back to the question of how many systems have been cancelled, it does seem to me—and I think you alluded to this, Colonel Burton—that much of the problem is in the Pentagon, but much of the problem is in the Congress.

Colonel BURTON. Yes, everybody is involved.

Senator ROTH. In other words, I have tried on occasion to kill certain programs that the General Accounting Office has said are not working, and you will find that it is fought tooth and nail on the floor and by the various Members of Congress who represent those that are producing the equipment. Is that not correct? Is that no part of the problem?

Colonel BURTON. Yes, it is.

Senator ROTH. So I think that Congress, before it becomes too critical, has to clean up its own act. Would you agree with that?

Colonel BURTON. I would agree with that, yes, sir. But it would also be helpful if people in position of authority in the Pentagon who finally came to a decision to cancel a weapons system, if they had the courage of their conviction to stand up to that decision in fact of all the pressures which are going to come. Quite often, it

does not take very long for that conviction to wilt under the pressure.

Senator ROTH. I have found the same eagerness to kill programs here that I find in closing down military bases that are no longer necessary, and I think this is a key issue. At least in that case, you have the Pentagon and the Congress on the other side, it makes it pretty difficult, does it not?

Mr. STUBBING. I can give you two quick examples. Colonel Burton's Bradley system was proposed for cancellation in January 1978 by President Carter. The Congress looked at it and, with a lot of help from staffers and the Army who did not accept the decision, they turned the decision around and we are still producing the Bradley, even though a President recomended cancellation.

And on the B-1, which you talked about earlier, when it was cancelled in 1977 and the Congress approved the President's cancellation, then a cabal of staffers and key Members of Congress kept the program alive sub rosa for 4 years, until 1981, when it was fully restored. These actions kept the B-1 contractor team in business for 4 years, and this has been well documented.

Senator ROTH. I played a role with respect to the end of the Aquila, and I found in the newspaper at home a letter last week from one of the suppliers of jobs that I think is a good example of what you are talking about, Colonel Burton.

But I would like to go back—and I will just be a minute longer, if I may, Mr. Chairman—because part of the problem of need for consultants is not a lack of bureaucracy. Frankly I think there is too much micro-management and too many bureaucrats. We would be a lot better off if we had a few well-trained experts in the job than the way we are now. Do you agree with that?

Colonel BURTON. I agree.

Mr. STUBBING. Absolutely, I agree with that.

Senator ROTH. Let me go back to this idea of people make the difference. You have the problem of attracting career professionals, which we have already discussed. We are going to have a new President next year, and you are looking for an Under Secretary for Acquisition. That is a very important initiative on the part of the Dave Packard Commission.

Where do you get people, qualified people to come in? I am very concerned about is the situation such as in Washington that, really, the best qualified people do not want to come here and serve. You have the low pay, of course. To many of them, that is not a problem. But the process that they have to go through to be confirmed, all the rules and regulations. I do not know what the answer is, but do you think this is part of the problem, that it is different—sure, you can always attract a lot of people for the top jobs, just by the honor of being Secretary or in the Cabinet, but then you go down some of these layers, from the Under Secretary, Assistant Secretary. We also talk about conflict of interest, which is a very important, serious problem, and yet we have built into our society, such interrelationship is hard to avoid.

My question is do we need to look at how we can attract good people? Is there something wrong with the system as far as that is concerned?

Mr. STUBBING. Well, we always have to go looking for good people, Senator. Again, my simple formula for success with the new administration, whoever wins in November, will be a President committed to these changes we are talking about this morning, picking a Secretary of Defense, not the acquisition person, a Secretary of Defense who is committed to these changes, and the Secretary then will go for the person he needs to change the acquisition system. I think the people are there.

Senator ROTH. Let me ask you this: Do you really think a good man—and I think we have had good men in the past, if you go back to the days of Eisenhower—can he really work through this bureaucracy?

Mr. STUBBING. It is going to be tough. What you need, frankly, as we just discussed, is along with the commitment and support of the President, he will need the support of the Congress, he has to have the leadership and certainly the Congress behind any changes he is trying to make, and he is probably going to need to convince at least one of the service chiefs to go along with major reforms, and that is a tough order.

Senator ROTH. Any other comments.

Colonel BURTON. Well, I would just say that out of 250 million people in this country, I find it hard to believe that there are not quality people out there who are willing to serve in public service who are not concerned about how high the salaries are, as long as it is adequate to put food on the table, whose interests are in the public service.

Senator ROTH. I think there are a lot of people willing to serve publicly, but there is also a problem if you are going to run the largest business in the world, you cannot hire someone with little experience.

Mr. STUBBING. Secretary Laird, was extremely successful, I believe.

Senator ROTH. What I am saying is these jobs require qualifications, and the first place they look, of course, is to the defense industry and that creates problems.

Colonel BURTON. There is nothing wrong with drawing from the defense industry as long as you bring people in at the same level to assure checks and balances who do not come from defense industry, who have a different perspective.

Senator ROTH. Mr. Chairman, just let me make one final comment. We have been making negative comments. I think one thing we sometimes loss sight of is that at least this investigation apparently has been carried on in-house primarily, and I think it shows that the system in that sense has worked, and I think we ought to recognize that.

I would hope that the steps that you and I have both worked on with the independent auditor, with the independent operational test, some of these things I think have been valuable reforms, so perhaps some steps have been taken forward.

Thank you, Mr. Chairman.

Senator PRYOR. How many people, Mr. Stubbing, roughly speaking, how many people in the Department of Defense are involved in procurement?

Mr. STUBBING. I have seen estimates of 50,000, Senator.

Senator PRYOR. I have heard that Navy has 80,000. Is that wrong?

Mr. STUBBING. 80,000?

Senator PRYOR. Now, I am talking about secretaries and everyone down the line, but there are many thousands?

Mr. STUBBING. Many thousands.

Senator PRYOR. I asked the President of McDonald's a couple of years back how many people he has in procurement, and he said 11. They seem to be doing pretty well.

I want to thank this panel, Mr. Falk and Mr. Stubbing, and Colonel Burton. Do you have any other comments? Thank you all for coming.

Colonel Burton, I appreciate you coming. I know the other night I had to convince you to come. Senator Roth, I think you might like to know what Colonel Burton said to me. He said he did not want to appear self-serving. Colonel Burton, you are truly a fine public servant, as all of you are, and you have all made a great contribution today.

We are going to have another hearing. We are going to call the final panel in a moment, but I hope to have another hearing within the next several weeks where we can talk about some of the proposed solutions. We are talking about some of the problems today, and I hope we can talk about some of the solutions.

Thank you very much.

We, at this time, will call Mr. Derek Vander Schaaf, who is the Deputy Inspector General, Department of Defense, and Mr. William H. Reed, Director of the Defense Contract Audit Agency.

I want to apologize first to both of you gentlemen, Mr. Vander Schaaf and Mr. Reed. You have waited patiently since 9:30. It is 12:30 now. That is 3 hours of sitting. One reason that I thought you might go last on the agenda today is so you could hear about some of the problems we are talking about and then give a response from your respective views to some of these issues. We look forward to your statements.

We will try to invoke a 5-minute rule, but if we need to take a little more time, we can.

Mr. Vander Schaaf.

## TESTIMONY OF DEREK J. VANDER SCHAAF, DEPUTY INSPECTOR GENERAL, DEPARTMENT OF DEFENSE [1]

Mr. VANDER SCHAAF. Thank you, Mr. Chairman. I hope we do get an opportunity to respond to a lot of the questions and testimony that was given this morning. Much of that testimony was extremely good and very accurate. There are a couple of things that I would like to correct for the record as we go through this subject.

I want to tell you right up front that I am concerned about the consultant business, and I have been for years, Senator. I very well remember your testimony when I was a staff person on the House Appropriations Committee in 1981. I went back and read that testimony again, and you had your finger right on a lot of the prob-

[1] See p. 80 for Mr. Vander Schaaf's prepared statement.

lems. We have a lot of those problems today; there just is no doubt about it.

Many of those problems have been discussed and I want to get to them in a minute. Also, I want to say that our office, the Office of Inspector General, has consistently supported strong legislation in the revolving door area. The new revolving door law went into effect on April 16, 1987, and, therefore, has not been in effect long enough to really have any impact yet. We cannot tell the kind of impact it is going to have.

We supported almost everything in that legislation, based on recommendations that we made in testimony to Congress. We supported your proposals for a tougher, independent operational testing organization that is both yours and Senator Roth's proposals that were made at that time.

We have worked hard to provide whistleblower protection to people within the Department of Defense. I know at times we are accused of not always doing that, but we have, including Colonel Burton's case. I am prepared to discuss that case where there were some questions about whether he was reprised against as a result of whistleblowing.

So, I thought the first thing I would do is discuss the consulting arrangements that one can have. All three of them have been mentioned briefly this morning.

The first one—and obviously the easiest one for us to control in the Department of Defense, and one which has the most rules and the best behavior—is what we call an appointed consultant. That is a person who comes in and goes to work for the Government for a limited period of time, usually not more than 130 days a year, and is paid a maximum amount of $260 a day. That costs the Department very little money.

I think Senator Sasser mentioned the figure of $2.3 billion. I think he misspoke. I think it is $2.3 miliion. It may be more than that, but there are roughly, during a year, probably 800 people who enter the Department of Defense as consultants on this basis, work for a limited number of days, then leave the Department of Defense. There are potential conflicts of interest, but there are also controls.

Next we have the type that you discussed in your previous hearing with the General Accounting Office and the one that has been of most concern until this recent scandal broke. That is the process of hiring contractors to serve in roles where they provide information, data, studies, reports and in some ways impact the policy functions of the Government. Here we spend, as you show in your charts, Senator—and those charts, incidentally, come from the Department of Defense—that $2.8 billion figure. That $4.2 billion figure comes out of a new accounting system that the Department has developed to track those costs. Here we have some problems. We still have some controls and they are relatively good.

The third group—and this is the one we are talking about and is the one that is getting most of the present publicity—is consultants to DOD contractors. Here we, of course, have no contract with the individuals and there are very few controls.

Now, Senator Levin spoke to that problem earlier this morning when he addressed the Committee. He said there were absolutely

no controls. I spoke with the Senator after that because I wanted to correct him on that point. He then asked me to mention our conversation when I talk to you this morning because there are some controls. I agree with him, however, that there are no effective controls. There are very few of what I would call effective controls.

There is a DOD directive on contracted advisory and assistant services. There is a provision in that directive on conflicts of interest, and maybe I should read that to you. It says: "Conflicts of interest, where an offeror or an affiliate has a collateral interest in the result of the contract, must be avoided. Clauses to prevent such conflicts of interest shall be included in solicitations to the maximum practical extent. Contractor employees performing under DOD contracts shall be required to sign appropriate disclosure statements and maintain proper employer-employee relationships."

Now, we have not done any audit work against that particular directive, but maybe Mr. Reed can talk to it. As far as I know, there are very few contractor employees that are filing complete, if you will, financial disclosure statements, other contingency arrangement statements they may have, and so forth. So there is something there. It has not been policed or looked at in any close degree that I am aware of.

I also wanted to comment, because in your earlier hearing you indicated that many Inspectors General have not complied with the law. Well, this Inspector General has complied with that law. We have submitted five reports to the Congress and we have a sixth report that is just about ready to be issued.[1] It is in the final stages, and that should be available to the Committee very soon.

Senator PRYOR. What report is that?

Mr. VANDER SCHAAF. These are the reports that are required under title 31 U.S.C. They deal with how much of this type of consulting is going on and is the accounting system correct. They do not deal with the quality or the cost-effectiveness of the process. The requirement for those reports and it is one that you helped put into law, I believe, in 1981, is a result of the hearings that were held at that time.

Some progress has been made in the accounting business, and that I can speak to at length if you desire to hear about it.

The other point I mentioned is a DOD directive. It is still relatively new, by organizational standards, when you talk about things as big as the Department of Defense. It was issued in 1986. I think it is starting to have some effect, and it has carefully defined what constitutes consultants and puts them into four categories, and then allows for two additional categories which we include from time to time. I will not get into those four categories, because you and your staff are familiar with them.

There is a new accounting system, and that, in my opinion, is the only way to get good data on consulting contracts. You cannot count on the Federal Procurement Data System to provide accurate data on how many consultants we have. It just was not constructed to do that, and you will never be successful in doing that.

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[1] See p. 135.

I know that you have used, and batted around, some figures that came out of the General Accounting Office about the Department of Defense having $19 billion or $18 billion worth of consulting. Do not use that figure, sir.

Senator PRYOR. Let me say that I have never maintained that you use $18 billion worth of consultants. I said the GAO says somewhere between $2.6 and $18.8 billion.

Mr. VANDER SCHAAF. Okay.

Senator PRYOR. And I am not talking about trash pickup at the Little Rock Air Force Base. I am not talking about paying some doctor to perform an operation who is not on the public payroll. I know there is a great deal of leeway.

Mr. VANDER SCHAAF. I just raised the issue because, in that $18 billion kind of figure, you have the cost to maintain and operate every research and development testing range in the United States.

Senator PRYOR. I understand that.

Mr. VANDER SCHAAF. Well, a lot of those costs—electricity for example—are all the management support costs that go with operating our test and evaluation facilities.

Senator PRYOR. Why can't we have a distinct way of reimbursing these people who provide management support services? We talk about support. Maybe they could get a blue and white polka dot check written to them from the Government, maybe a consultant could get a green and white polka dot check, some way to track——

Mr. VANDER SCHAAF. And we have that system coming along.

Senator PRYOR. Okay.

Mr. VANDER SCHAAF. It takes a long time in a bureaucracy to get it into place but, believe me, it is moving along.

Senator PRYOR. All right.

Mr. VANDER SCHAAF. We have a new accounting system; it is producing results right now. I think we are reporting—and I will give you the numbers here.

Senator PRYOR. You have more faith in it than I do.

Mr. VANDER SCHAAF. For 1988, we are reporting $4.7 billion and that compares to the 1987 figure of $4.2 billion. We have recently audited—and I can give you the results of our audit in a moment—we looked at some contracts in this area and we found that many of those were still not properly reported in either the Federal Procurement Data System or in the new accounting system. The rules are in place now and if you give the people and the bureaucracy enough time to work, I think we are going to get the numbers issue straightened out to a large degree, and that has taken us, as you know, 7 years.

But that is not going to address the problems that you and this Committee are addressing here this morning. These are the problems of improper relationships and buying services that the Department does not need and the lack of competition and conflicts of interest and all of those kinds of problems.

Senator PRYOR. I am one of the old hardheads around here in that, frankly, I just do not like to be made a fool of. I appreciate what you are trying to do, but knowing this system, it is highly likely that in January you will be somewhere else.

Mr. VANDER SCHAAF. Sir, I am 25 years a civil servant and unless they "can" me for being too candid with you, I will be back here in January, as far as I can tell.

Senator PRYOR. You know, I have listened to OMB 9 years, saying they were getting ready to define consultants. I have listened to OMB say we are getting ready to re-do our Circular A-120. Well, that began in 1981, and in 1988, in January, they finally issued it. It took them 7 years.

Mr. VANDER SCHAAF. Yes, and they re-did it along the lines of the DOD directive. It is almost a match to the DOD directive, and we are now getting somewhere.

Senator PRYOR. Let us just be very leery about saying what we can expect. Let us not get our expectations up.

Mr. VANDER SCHAAF. In the finance and accounting area—I am not going to paint a rosy picture about the rest of it. Now, we have done some other audit work in this area that touches on some of these problems. We did some work recently in the area of unsolicited proposals. We looked at, I believe, 50 or so unsolicited proposals and found all kinds of problems in about 17 of them. We found problems such as the lack of competition, the way work was described, the work that was really did not match what was in the contract, et cetera.

We sent that draft audit report to the management side of the Department of Defense, and I got a reply to that management report that, to me, illustrates all of the problems that we have in this business. I think it is one of the most degrading kind of replies that we could get. First, it degraded my office.

Senator PRYOR. Who did you receive it from?

Mr. VANDER SCHAAF. I received this reply from an individual whose office does extremely good work. I cannot believe it. It was from Andrew W. Marshall, Director for Net Assessment, Office of the Under Secretary of Defense for Policy.[1] Mr. Marshall came back with an answer to us which says, if you read between the lines, "We do not really care if the contractor does not deliver the information on time, if we do not get the draft report, because we have talked to them and we get the information we need," et cetera. What this reply says to me is what is wrong with so much of this business is that we are creating a personal service contract and its OK. We really have a situation where the contractor has become a Government employee and the relationship is one of personal services, not one of a buyer and a seller. Therefore, the rules and regulations that apply to buyer and seller relationships in the Department really do not mean all that much.

You know, that bothers me, the whole tone and tenor of that kind of reply, the kind of answer we get to our report, because it reflects on how management in the Department of Defense considers this process to work.

Senator PRYOR. Mr. Vander Schaaf, I would like to have that letter inserted in the record.

Mr. VANDER SCHAAF. Okay. We can insert that. Our audit report will be out and available in a very short time, and it will be every-

[1] See p. 183.

body's comments. You will have a complete record and you can deal with it at that point.[1]

Another example is an audit report we issued recently on "beltway" contractors. A huge percentage of the "beltway" contractors fall into the categories of work that we have in mind when we use the term "consultant." In that audit we look at how much equipment—they call it industrial plant equipment—these contractors were receiving and why they were receiving this "industrial plant equipment."

Again, we found a terribly serious situation. I do not have the figures with me today, but close to $4 million was paid to a very limited number of contractors. They were allowed to write off the purchase of all of that equipment against the cost of the first contract and come back on the new contract and buy more equipment, such as computers, typewriters, desks, "industrial plant equipment," as the term is used.

The equipment was not necessarily worn out or useless. In many cases the contracts did not even authorize the provision of such equipment, but it was provided anyway outside of the contractual agreement.

Another example that you have pointed out, Senator Pryor, on many other occasions is that we complete one of these contracts at a very small amount of money. An example I can offer you is where we did some work at the Hazardous Material Technical Center, at the Defense Logistics Agency. We completed the contract for $3 million, and it was for 4 years. That was supposed to take care of it.

However, at the end of the contractual period, the Government had increased the amount to $26 million, and $23 million of that was add-ons to the $3 million contract. Now, we reported those add-ons as competitive awards in the system that does this. Again, it is another difficulty with this business, once you are in, you are in well and you keep getting that kind of business. If we are going to do a routine function, a day-in day-out kind of function, then we ought to give serious consideration to employing Goverment personnel, and that point has been made repeatedly.

We have also done a good amount of work on the Defense Science Board. We did that work early in 1983, right after we were established as the Inspector General Office, and it caused quite a stir in the Pentagon, as you probably well remember.

After that work was finished, we started to see compliance with the Advisory Committee Act, to the degree that we had not seen before. We also began to see a number of reviews made of other consulting and advisory committees similar things to the Defense Science Boards.

The first year, 25 of the reviews were done. The second year, I think it went to 16. The next year it went to 2, and then it fell right off the scale again, so it requires constant vigilance. Then we went in and did some inspection work at the Strategic Defense Initiative Organization (SOIO), and we found some potential difficul-

[1] See p. 135.

ties. Senator Levin spoke about one of those difficulties, and that appeared in the one particular case that he talked about.

So, I want to impress on you, we are aware of the problems. We try and go after them. We try to plug the holes when we see them, and so forth.

Also, as I mention in my statement, we have had to track many examples of where we thought sensitive data was, in fact, passed to those outside of what we call legal channels. I am talking about security data, classified information now. I will give one example from my statement.

Back in the 1983–1984 timeframe, we had a number of companies and individuals under investigation for that reason. We were eventually successful, I believe, in prosecuting two companies that pled guilty. Some of the individuals still have their cases pending. It is a very difficult area to deal with, but it ties in, to a degree, to the situation that is currently occupying the front pages of the newspapers.

I have a section also in my statement dealing with personal service contracts. Quite frankly, I think that many of the consultant type contracts are personal service contracts. Those are outlawed by Federal regulation, but there are lawyers and there are others who obviously work for the individuals that want to have those contracts.

Senator PRYOR. Who grants those contracts? Does one person have to sign off on all of them?

Mr. VANDER SCHAAF. Well, the contracting officer has to sign off, but he or she seeks a legal interpretation that the contract is, in fact, not a personal service contract. I can get into that with you in more detail. I have with me all the elements that constitute a personal service contract, and I repeatedly look at those in relation to specific contracts and many contracts look like a personal service contract to us, but there are ways to escape from the prohibition.

Senator PRYOR. Mr. Vander Schaaf, thank you for your statement. I am going to call on Mr. Reed in a moment. Here is the type of thing that concerns me: Here is a report, paid for by the taxpayers, done by a consulting company for the Navy, in August 1985. On January 27, 1986, the Department of Defense directive which governs consultants takes verbatim recommendations from the consulting firm and they become the regulations of the Department of Defense.

Mr. VANDER SCHAAF. I am familiar with that.

Senator PRYOR. Who authorized this?

Mr. VANDER SCHAAF. I assume the individuals—I did not know the Navy did it.

Senator PRYOR. It was the consulting firm that made the recommendations.

Mr. VANDER SCHAAF. I knew that there was a consulting firm that did a lot of the work.

Senator PRYOR. Well, the bottom line was do not cut back on consultants.

We have got a long way to go. Another area I hope you will look into is compliance with the law passed, I believe 2 or 3 years ago, Senator Roth. We stated in the law that any highranking officer who retires and goes to work for a defense contractor or a consult-

ing firm that does business with the Government must register with the Secretary of Defense.

I have here the names of 68 or 69 generals from the Air Force who retired in 1986, 1987, and 1988. Now, if you can find any of these people registered anywhere, I will eat your hat. That law is not being obeyed. If it is, it is very spotty. We are going to find out where all of these people are.

Mr. VANDER SCHAAF. I am not familiar with that. I am familiar with the form 1778 process, when people leave Government——

Senator PRYOR. Title 10, Section 2397, I believe is the citation.

Mr. VANDER SCHAAF. Is that the one that requires continual reporting for 3 years after you leave government?

Senator PRYOR. I think that is correct.

Mr. VANDER SCHAAF. That is a result of the new revolving legislation passed in 1986 and it went into effect in April of 1987.

Senator PRYOR. So it should be complied with at this point.

Mr. VANDER SCHAAF. I spent yesterday afternoon with the General Accounting Office trying to work out some details. I had planned to do some tough audit work in this area. We were going to try to run the computers on everyone who retired since April 1 or April 15, 1987, within certain grade structures, then go get the industrial security clearance computer tapes—because in order to do business in this world you have to have, generally speaking, although perhaps not in all cases, a security clearance of some kind we will run the two against each other, to make sure all those people have in fact filed all of the required documentation on a regular basis, and then the thing that is never done in this process, look at or audit the paper. If the paper does not accurately spell out what happened—you can see all the blanks are filled, but if you do not send somebody out on occasion to check and make sure that what the person said he did when he worked for the Government and what he or she is doing when they are now working for the contractor—you have not got anything but a pile of paper. We have got to do more checking and give people a little fear factor that "I had better report straight because somebody is going to take a look."

Senator PRYOR. It had better be more than a little fear factor. I think it should be a lot.

Mr. VANDER SCHAAF. All right.

Senator PRYOR. Mr. Vander Schaaf, I heard some of the testimony you gave, I believe, 2 days ago before the House Armed Services Committee. I was interested to find that you called consulting people "middlemen," the middlemen we very seldom see. Now, I am going to ask you another question about accountability.

In your other life, you worked for the Defense Appropriations Subcommittee in the House. You were quite an authority, I might say, and had earned a great deal of the respect on both sides of the Capitol, in the House and Senate. Now, we are going to be taking up the Defense Appropriations bill sometime in the next 2 to 3 weeks, I think, and the bill weighs about 30 pounds.

Now, in that 30-pound piece of legislation, where is a fellow like me going to look in that legislation and find consultants? Where do you hide all of this stuff?

Mr. VANDER SCHAAF. I don't know.

Senator PRYOR. Come on, you used to draft it.

Mr. VANDER SCHAAF. When we get the accounting system in order, you will then be able to break it out of all of the appropriations that are in there. I do not know that it will do you a lot of good, but you will be able to at least get some perception of whether things are moving in the right direction and the nature and kinds of consulting within those four general categories that are going on and determine if the Federal Contract Research Center amounts are going up or down.

It is going to take a lot of work. It is not an easy job to do, and that is why the Appropriations Committees have staffs to deal with that.

Senator PRYOR. Well, I just urge you, do not look only at the top four categories. There are an additional seven categories. There are billions of dollars going into that category, and I hope that you will look at that.

Now, can one be a convicted felon and become a consultant for the Department of Defense?

Mr. VANDER SCHAAF. Yes, one could be. If he is a convicted felon involving a defense case earlier, he should be suspended or debarred, and a debarment could last for up to 3 years.

Senator PRYOR. How do you know if that person has been suspended or debarred?

Mr. VANDER SCHAAF. Well, there is a suspended and debarred list that is made available. Unfortunately, people have a way out, particularly if we only suspended or debarred the company and not the individuals. They give themselves another company name, put up another banner, and they are in a position to do business.

We try to track that down, Senator, and we try to stop that kind of business. I will not mislead you, there is a lot of that going on. I would not say it never happens.

Senator PRYOR. How does the Department of Defense Inspector General know that when you have a consulting contract with the Department of Defense you are not also working for General Dynamics or Lockheed or McDonnell-Douglas?

Mr. VANDER SCHAAF. We do not. Only if the proper disclosure forms are filed, and if the disclosure forms are filed, even then I am not sure we would know that.

Senator PRYOR. All right, let us take BDM. Is there any way to know that BDM, who has $228 million worth of Government contracts with the Government, do you know if they are working for four to five foreign governments at the same time?

Mr. VANDER SCHAAF. No, we would not.

Senator PRYOR. We do not know that do we?

Mr. VANDER SCHAAF. It may be—and I have to go back and check—that under the advisory and assistance services directive, that they have provided some of that information on some of their contracts. But my guess is that many of their contracts are not defined as falling under that directive even though they probably should be so defined. Therefore, the employees of BDM who work on those, or the corporate officials that might have conflicts develop, would not step forth and identify those conflicts.

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Senator PRYOR. Well, I stated the other day to someone that we are not the whole picture, we are not seeing the dark side of the moon. All I want to do is just see the whole moon.

I am not saying consultants are bad. All I want to know is who they are, how much they are getting paid, and what they are producing. I am also very concerned about the national security. I am getting more and more concerned about letting these people in the tent. I think the state of national security is very fragile with a lot of these companies, because of the potential conflicts of interest.

Mr. Reed, we are not letting you say a word. Would you like to submit a statement or read a statement?

## TESTIMONY OF WILLIAM H. REED, DIRECTOR, DEFENSE CONTRACT AUDIT AGENCY, DEPARTMENT OF DEFENSE

Mr. REED. I would like to submit a statement for the record Senator,[1] and also briefly summarize it.

Senator PRYOR. Thank you. We will put it in the record and then I am going to let Senator Roth ask questions.

Go ahead, Mr. Reed.

Mr. REED. This has been a rather broad-ranging discussion this morning, and I think in order to put our role into perspective, I would like to first make just a brief comment about our mission.

Our responsibilities are to provide the necessary contract audit for the DOD and provide accounting and financial advisory services to all Department of Defense components responsible for procurement and contract administration. These services are provided in connection with the negotiation, administration, and settlement of contracts and subcontracts.

I believe that DCAA in that mission has been very effective. For example, the total savings achieved by the agency has increased from $5.5 billion in fiscal year 1982 to almost $9 billion in fiscal year 1987. Currently, DCAA is saving $36 for every $1 of our operating costs.

Our mission does involve reviewing consultant costs that are charged to certain government contracts. There are generally two points in time when we may audit such consultant costs—prior to award and subsequent to award.

First addressing those audits which are done prior to award of a contract. These audits are to review a contractor's proposed costs in order to provide the contracting officer with an opinion on the reasonableness of the projections. They are typically done only for those contracts where there is not adequate price competition.

The second point in time which may involve reviews of consultant costs are audits after contract award. Each year, contractors having flexibly priced contracts submit claims for their indirect expenses. These claims must be audited and final rates established in order to determine the final amount that a contractor will be paid on its flexibly priced contracts.

The criteria that DCAA uses to evaluate and determine the propriety of costs charged to government contracts can be broken down into three basic categories:

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[1] See p. 100.

Allocability—are the costs assigned to one or more cost objectives based on the benefits received. In other words, did the work of the consultant benefit the government.

Reasonableness—a cost is considered reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. This is a broad standard that requires the exercise of a high degree of judgment.

And lastly, allowability—are the costs allowable in accordance with the Federal Acquisition Regulation cost principles. Depending on the nature of the consulting service, many of the cost principles may come into play. However, I would like to briefly summarize some of those that are perhaps most relevant:

FAR 31.205-33, professional and consultant service cost: These costs are allowable when reasonable in relation to the services rendered and when supported by evidence of the nature and scope of the services performed.

FAR 31.205.22, legislatve lobbying costs: Costs associated with any attempt to influence the outcome of any Federal, State or local elections or legislation are unallowable. Costs associated with providing technical or factual information directly related to the performance of a contract through hearing testimony, statements or letters are allowable provided there is a documented request for such information.

FAR 31.205-50, executive lobbying costs: Costs incurred in attempting to improperly influence, either directly or indirectly, an employee or officer of the Executive Branch of the Federal Government to give consideration or act regarding a regulatory or contract matter are unallowable.

FAR 31.205-38, selling costs: Selling activity includes advertising, corporate image enhancement, bid and proposal costs, market planning, and direct selling. While consultants may be used in many of these areas, direct selling is the most sensitive. Compensation, fees, or commissions paid to selling agents are allowable if they are reasonable in amount and if payment is made to bona fide employees or agencies maintained by the contractor for the prupose of securing business.

I have given a more complete discussion of these cost principles in my formal statement.

Now I would like to touch on the role DCAA plays in the prevention and detection of fraud, including any improper activity on the part of consultants. The contract auditor's primary responsibility is to perform sufficient tests of costs claimed on Government contracts to reasonably assure that the costs fully comply with the Federal Acquisition Regulations and the terms of the contract. Tests of this purpose rely heavily on evidential matter contained in the contractors' books and records and do not include the broader techniques employed by a criminal investigator. Nonetheless, auditors are expected to and do maintain a high degree of awareness regarding potential indicators of fraud.

We have established training and procedures for our auditors to be alert to potential fraudulent conditions and to report those observations to law enforcement officials. In fact, since 1982, DCAA have made over 900 referrals to investigative organizations.

We have also expended significant resources in assisting investigators. Fiscal year 1987 support exceeded 100,000 hours. The results of this cooperative effort between DOD auditors and investigators have been numerous criminal convictions and the recovery of millions of dollars.

In addition to training all auditors to be alert for fraud indicators, DCAA has heavily emphasized the prevention of fraud by performing reviews of contractors' systems to ensure they have adequate internal controls. The chances for fraud, waste or abuse is much greater in a system with poor internal controls.

I am sure one of the questions on your mind today is why did the auditors not find the alleged misconduct in the present procurement investigation. From the contract auditors role described above, it is clear that our opportunities to detect certain types of illegal acts is limited. However, I will not know if we should have been more alert or vigilant in our analysis of claimed costs until more details of the investigation are revealed.

Obvious questions are have the costs for these alleged improper consultant activities been claimed as an allowable cost on our contracts; what type of evidential matter was presented to the auditor if such costs were claimed; and what audit position was taken on the claimed cost if the audits have been completed. Particularly, I am interested in knowing if our audit practices have worked appropriately and if the cost principles have provided an adequate regulatory basis for evaluation of consultant costs.

Certain of my concerns require immediate action and can be undertaken within the scope of DCAA's normal responsibilities. Therefore, I have initiated the following actions, all of which, of course, will be coordinated with the DOD General Counsel to make sure that we do not impede in any way the going investigation.

First, we have reemphasized the current guidance to our field auditors and will be keeping them informed of the audit ramifications as issues are disclosed. We will also assess the need for any changes in our current guidance and determine if any additional specialized training in the area of reviewing consultant costs is warranted in light of the recent revelations.

Second, I intend to accelerate the review of consultant costs at major contractor locations where claims have been submitted. This will allow us to review these costs on a current basis and assure that any inappropriate costs are eliminated from contract billings at the earliest possible time.

Finally, as we conduct the accelerated audits, a critical analysis will be made of the current regulations to determine if they require strengthening. Our audit experience will be used to support any recommendations for change forwarded to the Defense Acquisition Regulatory Council for consideration.

On the issue of regulatory change, I would like to point out a misinterpretation of the access to records statutes (10 U.S.C. 2306(f) and 2313(a)) and the FAR provisions that I believe may hinder our efforts to review consulting costs.

My concern stems primarily from two recent court decisions which held that DCAA did not have a right to review certain contractor records. Consider the following excerpt from a decision by the United States Court of Appeals for the Fourth Circuit:

"Under DCAA's view, the work product of any Newport News Shipbuilding unit whose costs constitute general and administrative expenses must be made available to DCAA so that it may see whether the government is 'getting its money's worth.' " That is true, that is DCAA's position. "Yet, the salaries of the executives of Newport News, its board members, and its legal counsel are all changed as general and administrative expenses. DCAA is surely entitled to review the salaries of these Newport News employees, but it does not require access to the work product of each of them in order to perform its cost accounting function . . .

"DCAA is therefore fully able to conduct a review of the effectiveness of Newport News' accounting practices. What it cannot do under 10 U.S.C. 2313(a) or 2306(f)(5) is demand access to the analysis contained in the confidential work product of Newport News' own audit staff."

This decision says DCAA only needs access to cost records and not the actual work product. This could prove to be a substantial impediment to our ability to review costs like those incurred by consultants. The cost principle FAR 31.205-33, that I mentioned above, calls for the auditor to evaluate evidence of the nature and scope of services rendered to arrive at conclusions regarding necessity and reasonableness.

FAR 31.205-50 on executive lobbying costs requires the auditor to determine if the specific activities of any contractor employee, as well as consultants, constituted improper influence, either directly or indirectly, of a Government employee. How can the auditor be expected to make such assessments adequately without access to the work product of the consultants?

Senator PRYOR. Mr. Reed, I hate to interrupt. I fear that we may have a vote in a very few minutes on the Senate floor, could we just submit your statement for the record, and we appreciate that information.

Mr. REED. Certainly, Mr. Chairman.

Senator PRYOR. One question I would like to ask, your agency seems to be interested mostly in the costs of the contracts, the costs of the consultants, et cetera. I would like to know who justifies the use of a consultant to begin with, not the cost, but who justifies hiring the consultant or a contractor to perform a particular mission. Where is that embedded in our structure?

Mr. REED. In the case of a consultant hired by a defense contractor, it is the defense contractor's responsibility to justify the need and services of the particular consultant.

Senator PRYOR. And that becomes an embedded cost in the weapons system or in the project which he ultimately bills the taxpayer for.

Mr. REED. Yes, sir.

Senator PRYOR. I am aware of that. On the DOD side, let us say the Army contracts with XYZ Consulting Company, and some firm out there gets $300,000 to do a study. If you look at the cost of that study, who looks at the justification for giving that contract to begin with, or whether we needed that study performed by the XYZ Company?

Mr. REED. Under the directive that was referred to earlier, there is a requirement that each DOD component establish an individual

reasonsible for implementing the requirements of that directive. That individual is responsible for assuring that within his component these controls are in place to review and approve these types of consulting contracts.

Senator PRYOR. Mr. Vander Schaff, do you——

Mr. VANDER SCHAAF. That is basically correct. The organization, of course, that wants the study done pushes hard to get it across. If they do it right, they should have it in a plan. They should have it looked at. It should be reviewed both from a content standpoint and it ought to go through a budgetary scrub.

The problem is, of course, that sometimes those things happen at the last minute, what is in the plan does not get put on contracts, something else gets put on the contract.

Senator PRYOR. Do you see a lot of year-end spending, Mr. Vander Schaaf?

Mr. VANDER SCHAAF. I cannot say so. I do not know of anything that we have seen that was particularly serious. I would not say so.

Senator PRYOR. Senator Roth.

Senator ROTH. Thank you, Mr. Chairman.

I would like to go back to a question that the Chairman asked about the audit. When it comes to the contractor and he has a consulting contract, it is up to him, you say, to justify that it is a reasonable expenditure, is that correct?

Mr. REED. Yes, sir.

Senator ROTH. Now, who looks at the justification?

Mr. REED. The Defense Contract Audit Agency.

Senator ROTH. That would be your responsibility?

Mr. REED. Yes, sir.

Senator ROTH. So it is not merely a question of cost auditing, but you do have to go to whether or not you think these contracts are justified, is that correct?

Mr. REED. Well, whether it is reasonable—that is whether the costs of the contract are reasonable for the nature and scope of the services that the contract calls for.

Senator ROTH. Who looks at whether or not the consulting services are needed? Is that part of the justification?

Mr. REED. Well, the justification for the technical side would be the responsibility of the contract administration organization as supported by the program office that issued the contract. Their representatives would be responsible for looking at the technical aspects of a consulting contract, as to whether or not those services would be the type of thing that were needed.

Senator ROTH. If it's a cost reimbursement type contract, do they have to get the approval of the contracting officer or the contracting officer representative?

Mr. REED. No, they do not.

Senator ROTH. So that really your agency is the basic line of investigation as to whether or not these consulting agreements are justified?

Mr. REED. I think that is a fair statement.

Senator ROTH. The reason I have to say that, under your predecessor, one of your predecessors, I was very critical of the audit agency on the grounds that I felt that there was too close a working relationship with the contractor.

I would like to ask your Deputy Inspector General a question I read in the newspaper, and I do not know whether this is accurate or not, but there was apprarently going to be a requirement that the Inspector General would have to get approval of the Secretary before going in and auditing a contractor. Is that correct?

Mr. VANDER SCHAAF. I think what you probably read about is some of the fallout from a memorandum that the Under Secretary of Defense for Acquisition wrote to the Secretary, where he proposed that before the Inspector General could conduct a search, even though we had obtained the approval of the United States Attorney and a U.S. Magistrate, that before that search is conducted it ought to be approved by a higher Defense official, someone in the acquisition chain or the Deputy Secretary of Defense.

The Office of the Inspector General objected strenuously to that proposal, felt it was totally without merit, would be an interference with a Federal investigation, and would just have all kinds of bad ramifications. The Secretary of Defense did not adopt the Under Secretary of Defense for Acquisition proposal, so I think the problem has gone away.

Senator ROTH. If you recall, David, it was about 5 or 6 years ago where we were creating what we hoped would be an independent IG, with certain limitations because of secrecy, where the Secretary felt it was a quesiton of security, then he had to advise the Chairman and ranking member of Governmental Affairs and Government Operations and Armed Services. Has there ever been a situation where that has had to be done?

Mr. VANDER SCHAAF. No, there has never been a situation where the Secretary of Defense has terminated an inquiry that the Office of Inspector General was making or, from my knowledge, there has never been an attempt by either the Secretary or Deputy Secretary to terminate such investigations.

We do have troubles from time to time, as one would expect, with people who do not want to let us get into this or that subject or program. The please do not look here kind of thing, but we break those doors down regularly, Senator Roth.

Senator ROTH. Is it not clear under the contract terms that the audit agency and yourself have the right to go in?

Mr. VANDER SCHAAF. Our powers greatly exceed the powers of the audit agency in terms of obtaining data and information and that sort of thing, both within the Government and with respect to Government contractors.

Mr. Reed was referring to a problem he has, even though the Congress has given the Defense Contract Audit Agency subpoena authority and subpoena authority is limited to what he is authorized to obtain under the contract.

Senator ROTH. Well, I was not raising his question.

Mr. VANDER SCHAAF. I see.

Senator ROTH. I am going back and asking you the basic question, is there any question but what you have the right under a contract to go in and audit?

Mr. VANDER SCHAAF. Absolutely, no question. We have been challenged in court on several occasions, and we have won those with implementation of our subpoena powers, our right to go in and get the job done is clear.

Now, we have discussed, within our organization, the need for testimonial subpoena power. I brought that up in my testimony with the House Armed Services Committee. I have an example, and I would like to put in your record, a list of 65 of the testimonial subpoena authorities that are authorized by Congress for individuals and organizations that conduct investigations. They cover such things as the Grain Act or the enforcement of the Automobile Bumper Act, and the enforcement of the reasonableness of bridge tolls or, you name it. I can provide the list.[1] I think it very unfortunate that the Inspector General does not have that kind of authority to get testimonial subpoena authority, because we need that so badly to establish intent in many of the cost mischarging cases, where we can get a paper trail that indicates something is wrong. Now, was it a mistake? Why did it happen? Who said what to whom and how does the process work?

True, many of the people, if there is a potential crime there, would take the Fifth Amendment, and they can still do that. But if we had testimonial subpoena authority, sir, we could in fact get people who know about how the system works when we go into a contractor facility, and the general counsel of that facility could not put out the word that nobody in the facility talks to the Inspector General. The Inspector General could say I want to know how that system works, you are not a target of investigation, and, therefore, you do not really have any Fifth Amendment rights to claim, just tell us how the system works and tell us what you know about it. If we could do that, we could be a lot more effective in our work.

Senator ROTH. I would be happy to look at that. I just want to make a final comment. I would be very concerned if anybody in the administrative part of the Pentagon in any way tried to impose certain limitations or rules and regulations. The purpose of this legislation was to make you independent. If there is a security problem, it provided ways and means for that to be reported, otherwise it is important that you act fully independent.

Mr. VANDER SCHAAF. We are fully aware that there is only one way you can stop an IG investigation, and it is for reasons of national security, and only one person in the Department can do that and that is the Secretary of Defense. We have not had that.

Now, we get people who delay us. I mean that is a standard. This is in source selection, and we look at those requests and we try to be reasonable. We do not want to go in and bump into something if it is source selection process or if it could cause a problem. If, however, there is a reason for us to be in source selection, we go and do it.

There are black programs, the special access programs. There is always a great concern about maintaining the security, as there rightfully should be, but we have a responsibility to see that those programs are in fact managed according to the laws that govern this land. Therefore, we do go into those programs and do look. The Secretary recently again emphasized to the people that manage those programs—do not give the Inspector General a lot of static about this—get on with it. If they feel that some audit ought to be

[1] See p. 127.

performed in that program, let them conduct the audit. We have problems, yes; have we ever been stopped from conducting an investigation, no.

Senator PRYOR. One point on the black programs, the national security programs: In 8 years, if my figures are correct, we have seen black budget programs rise from $5 billion to $35 billion in that period of time. I think that is about 20 percent of our procurement budget, which is now stamped national security. We have very little access to those figures and very little control.

Mr. VANDER SCHAAF. It is so important, that they are audited and that they are covered. I will let Mr. Reed speak to that but we have looked at his detachment that looks at special access programs, and we think it needs beefing up, also, and he is attempting to do that.

Senator PRYOR. Well, I would just like to say I think there is some abuse there, not in your department, but I think there is some abuse by using national security as a guise, as a masquerade. That is my own personal opinion.

Senator Bingaman.

Senator BINGAMAN. Thank you, Mr. Chairman.

Mr. Vander Schaaf, did I understand you, in your comments about the Federal Advisory Committee Act, that the Act requires these committees to register with the General Services Administration and file a charter? Did I understand you to say they have quit doing that?

Mr. VANDER SCHAAF. No, they still do it. One of the recommendations that we had when we conducted the Defense Science Board review in the 1983–84 timeframe was that somebody in the management organization go through and identify all the advisory and consulting type committees the Department has. They were to go through their records and ensure that they were all complying with those disclosure statements; that they were putting their meetings in the Federal Register; that they were maintaining minutes of their meetings and making those available to the public; and so forth.

They started the review process and I think they did it quite successfully and got it going, and then over a period of a few years—the review stopped. So we have got to inject a little enthusiasm into making sure that every time we create a new committee that consults to Department officials, it is done in accordance with the Federal Advisory Committee Act.

Senator BINGAMAN. You are saying we do not have an up-to-date inventory of these advisory committees, we do not have them in compliance with this Act, as you understand it?

Mr. VANDER SCHAAF. I am not sure if we do or we do not. At the time we completed the inspection of the SDIO office, which was in December of last year, we were concerned that there were committees being created that were not complying with the law again. We so wrote that up in our inspection report, and action has been taken again to get back on the problem.

Senator BINGAMAN. But just with regard to the SDIO and not with regard to the rest of DOD?

Mr. VANDER SCHAAF. That is right, in that particular instance we happened to be conducting an inspection and it caused us again

to raise questions of whether the process had gone on in all of DOD, the Office of Secretary of Defense, and in Defense Agencies in particular.

Senator BINGAMAN. The issue that the Chairman has brought up about whether you can be a felon and still get one of these consultant contracts, I think it is a good point. As a practical matter, the consulting contracts that we are here discussing primarily are those that go to people with security clearances and, as a practical matter, if you are a felon, you do not get the security clearance, if you do not get the security clearance you do not get the contract.

Mr. VANDER SCHAAF. That is absolutely correct. That is a key control point. If Congress is looking at possible legislation, Congress ought to take a good look at the security clearance process as a means of also providing checks and controls. That is why, as I told the Chairman a minute ago, we are trying to develop and write the outline or plan to build around the security aspects.

Now, in terms of enforcing the new revolving door law, we are going to miss some people. We are going to miss, for example, the Army colonel who is an engineer and has dealt with building on the military construction side or the civil works side, who immediately goes to work for an architect and engineering firm that does not really have a security clearance requirement. In that kind of review, if I use those different data tapes and those information bases, we are going to miss him, probably. We have got to find some other way to check these individuals.

For the most part, I think that we would be successful, and we could also think about that as a place to put the controls. I do not know exactly how to do that yet, and I am thinking about it. I will come back to you if I can find some proper way to do that.

Senator BINGAMAN. Another issue that has come up in the hearing is this Defense Science Board and whether there are conflicts built in that are not properly disclosed and whether there are decisions being made by people on the Defense Science Board, that they should be recusing themselves on. That is something that you did look into several years ago. I would be interested in your opinion as to whether we have got a serious problem here.

Mr. VANDER SCHAAF. I do not think we have a serious problem on the Defense Science Board today in terms of that. I think we do have a problem on the board, and it still bothers me. We felt, and our auditors felt, looking at the total available population of talent that can serve on one of those boards, that there was an in-group, if you will, of about—do not hold me to the numbers, Senator, but I think it was very close—240 people that were on lists to serve as candidates for the various scientific review groups that were formed. I thought that was far too narrow a list in order to really get a good cross-section of the industry and what is available to do it. There was heavy emphasis on major firms, for example.

I think a lot of new innovative ideas, quite frankly, come from the small firms just starting in the industry. I am not sure that we have done an adequate job of making that Board available to enough people.

Senator BINGAMAN. That is really a management judgment, that you are disagreeing with.

Mr. VANDER SCHAAF. When we walked out of there after the second time—and I think it was in 1984—the procedures were in place to meet the basic requirements of law.

Senator BINGAMAN. So you do not feel there is a serious problem or a widespread problem of conflict of interest or failure to recuse or something going on in the Defense Science Board at this point? Or you do?

Mr. VANDER SCHAAF. No, I just do not know. I do not know the answer to that question. Obviously, that is one of the reasons I say when you narrow the numbers of people who serve on the boards, you increase the opportunities for that. There is a problem when you are members of one of those boards and are consultants and there are four major firms that hire them as consultants. They may only get a dollar a day for serving on one of the advisory boards—I am not only talking about the Defense Science Board—but that gives them access to a lot of information and a lot of ideas of what is going to come down the pike in terms of how the Department might be willing to spend its money in the future and so forth. So they are willing to serve at a very low cost on a board like that, because of the information they obtain. They are on a consulting retainer with four or five other companies that have an interest in that information. The opportunities for conflicts are extremely great, there is just no doubt about it.

Whether any are taking place at this moment, I do not know. People do not write on forms "I have a conflict of interest." In the same way people do not write on checks "this is for a bribe." It is not that easy to prove.

Senator BINGAMAN. Just to conclude, do you think this is an area that we need to look at?

Mr. VANDER SCHAAF. I would look at this dual padding, if you will, of contractor consultants. I am more concerned about the contractor consultants than Senator Levin talked about. I do not think you were here when Senator Levin talked about that tie, and he had a perfect example of the kinds of situations you can get into where the same individuals serve on these advisory boards or they have a contract relationship with the Department and they have contractual relationships with a lot of other people.

Now, in our business, we some times would like to use consultants, and I am just very reluctant to ever bring in a consultant. We have done it in one or two cases of medical doctors, where I needed some very good technical medical advice. But any time we hire a consultant, and we do not know who else that consultant is working with or for, and I do not want our organization to get in a position where information is leaked out or somebody goes down the street and says I have a tie-in with the Inspector General, I can get you this or that. We just try to avoid consultants. We do not get involved with them.

Senator BINGAMAN. Thank you very much, Mr. Chairman.

Senator PRYOR. Senator Bingaman, and our friends at the witness table, I am going to conclude this hearing. This has been an exhaustive hearing. It started at 9:30 and it is now 1:30. I am going to conclude by reading the statement from Dick Stubbing's book, and he is quoting a very famous man. I will give you a test. I will not tell you who it is until I finish:

"To change anything in the Navy is like punching a feather bed."

Mr. VANDER SCHAAF. I can answer that one already. That is easy.

Senator PRYOR. "You punch it with your right, you punch it with your left, until you are finally exhausted, then you find the damn bed just as it was before you started punching."

That young Assistant Secretary of the Navy who uttered that statement was Franklin D. Roosevelt. That was a long time ago and what he was talking about in the Navy is still true of the Pentagon. It has been going on a long time. It is very hard to change. That does not minimize our opportunity but also our challenge to make it better and to make it more responsive, and certainly to improve our national security.

We want to thank both of you today. We still have another hearing on this matter. We appreciate any support and assistance you might give us and we look forward to working with you.

Mr. REED. Thank you.

Mr. VANDER SCHAAF. Thank you, Mr. Chairman.

Senator PRYOR. Thank you. The Subcommittee is adjourned.

[Whereupon, at 1:30 p.m., the Subcommittee was adjourned, subject to call of the Chair.]

# APPENDIX

**TESTIMONY OF MR. JAMES H. FALK, ESQ.**
**COFFEY, MCGOVERN & NOEL, LTD.**

Chairman Pryor and members of the Committee, I would like to thank you for your invitation to appear before you this morning and offer my observations on the very critical problems confronting the military procurement system.

Your Committee is to be commended for its longstanding interest in matters concerning the acquisition and award of contracts to further the National defense. I know the Committee's expertise in this little understood area will be indispensable in helping to shape the legislative initiatives that will ultimately emerge from hearings such as this.

Your Committee opens its inquiry this morning at a time when the fundamental integrity of the military procurement process has been shaken by the allegations of recent weeks. I would like to address a part of the problem which has been identified as the "revolving door," that is to say the continuing flow of individuals between private defense interests, on the one hand, and both the military and civilian procurement sectors of the Defense Department. This phenomenon is not in and of itself a bad thing, so long as Pentagon officials, at whatever level, do not use their positions to secure later employment with defense firms, thus enabling them to trade upon "insider" knowledge and influence to further the interests of their new employers.

How can we best prevent "revolving door" abuses, without unnecessarily adding to the layers of bureaucracy, auditors, bookkeepers, and investigators that are already in place at the Pentagon?

I believe the key to the problem lies in focusing on the only participants in the defense procurement process who are not adequately regulated by existing law, and I am speaking of the independent consultants. The private consultants involved in military procurement today are unregulated "free agents," at liberty to "work both sides of the street at the same time." They function in many respects as what you and I, Mr. Chairman, have referred to as a "shadow government."

The role of the private consultant in defense contracting has expanded inside and outside government in the following ways:

First, the Pentagon has been increasing its reliance on private consultants to help identify the weapons systems and services the Department is going to purchase as well to identify the criteria for selection of private suppliers;

Second, the very same private consultants are in many instances then selling to private defense suppliers their working knowledge of a particular procurement as well as their access to highly placed procurement officials.

Third, defense contractors entering agreements with consultants do not have the legal right or duty to control the consultants behavior as they do the behavior of their regular employees.

Fourth, recent disclosures indicate that some consultants have bribed government employees to obtain information which offers a competitive advantage to one

competitor over others and have in turn sold that information.

This "free agent" environment, coupled with the extraordinarily competitive pressures in defense contracting, has contributed to the climate in which the recently publicized abuses have taken root.

The only players in the procurement system today who do not have to abide by prescribed rules and standards of conduct are the consultants.

Let me contrast that situation with my role as an attorney, in which my professional conduct is regulated by the standards of accountability of my profession.

The American Bar Association Standards of Professional Responsibility define a conflict of interest as the representation of one client with interests directly adverse to those of another client. Loyalty is an essential element in the lawyer's relationship to a client, as I believe it should be as a government official to the United States or as an individual representing the interests of a private company. While it is no doubt true that ethics and morality can not be legislated, certainly temptations to behave in such a way as to risk a conflict of interest can be removed.

Let me turn for a moment to the existing law as it pertains to consultants and "the revolving door."

The primary law that regulates post employment conflicts of interest is found in Title 18 of the U.S. Code at Section 207. However, this law and its penalties only apply if

you become a direct agent, or employee of a defense supplier after your Government service, or if you act as an attorney for that supplier. It does not cover the activities of a person who after Government service in a procurement function establishes or joins a consulting firm which in turn has contractual relations with defense suppliers. Consultants should not be excluded from the coverage of this law and its criminal sanctions. I would recommend an amendment which would explicitly place independent consultants within the reach of this statute.

Let me next comment for a moment on the matter of registration requirements.

Presently, Title 10 of the U.S. Code at Section 2397 requires that consultants to major defense suppliers, who represent these interests before the Department of Defense, must report annually their defense-related employment for up to four years after leaving DoD.

However, as a recent GAO report states, the law exempts many consultants by limiting the disclosure requirement to major contractors and limiting the grade or rank to the very highest level military officers and civilian officials. This has not been an effective disclosure mechanism nor an effective means by which potential conflicts of interest can be identified.

Moreover, the failure to comply with the present disclosure requirements is punished by a mere administrative penalty (non-criminal) of a fine of not more than Ten Thousand Dollars, imposed at the discretion of the Secretary of Defense.

Originally this penalty was a criminal sanction of a fine of not more than One Thousand Dollars ($1,000) or imprisonment for not more than six (6) months or both, but it has been reduced.

Failure to report and disclose this information should be a criminal sanction, and those who disregard it should be punished. The necessity for disclosure and reporting by former defense employees of their current employment status is crucial in allowing all the players in the procurement process to know who the consultants are playing for and in turn assure all competitors of a level playing field.

Additionally, I believe all former defense officials, regardless of their rank or grade, should be covered by the disclosure requirements. Amendments such as these would help to bring the "shadow government" into the sunshine and, as Senator Proxmire (the original sponsor of the disclosure legislation) has observed, "sunlight is a great disinfectant."

In the 1987 National Defense Authorization Act, an amendment to Section 2397 attempts to prohibit three groups of procurement personnel from accepting compensation from major defense suppliers for a period of two (2) years after leaving DoD. On the face of the amendment it also does not appear to reach the activities of consultants because of vague definitions and ambiguous use of the words "contractor" and "compensation." I would urge your Committee to reexamine the scope of the 1987 amendment.

In addition to the changes I have advocated in the

registration law, let me suggest to the Committee that the following information should be required, as part of the registration process, from all consultants involved in the defense procurement process:

* identification of all clients represented,
* the types of services performed for each,
* the actual services rendered in each event,
* level of compensation from each client.

Mr. Chairman, several years ago, in the 97th Congress, you introduced a very worthy piece of legislation on the matter of consultants. S.719, "The Consultant Reform and Disclosure Act," addresses most of the problem, identified by recent investigations and should be re-examined by Congress in light of what has transpired.

Your legislation specifically empowered the Office of Personnel Management as the proper authority for implementing consultant registration, through receiving and maintaining disclosure reports and reporting annually to Congress and to the Pentagon.

In addition to those well founded provisions I would recommend granting OPM the power to enforce compliance as well as the power to enforce and prosecute violators in concert with the Department of Justice, which should be charged with undertaking criminal prosecutions.

By way of summarizing, Mr. Chairman, let one offer a bit of historical perspective on the matter we are discussing

today.

In 1769 Blackstone's Commentaries on the Laws of England, one of the legal classics of Anglo-American jurisprudence was published. Blackstone observed in his chapter describing Public Wrongs that the Laws of England had long provided that "if any person having the charge or custody of the King's armour, ordinance, ammunition, or habiliments of war, or of any victual provided for the King's soldiers or mariners, shall, either for gain or to impede his Majesty's service, embezzle to the value of twenty shillings, such offense shall be felony." Two centuries later, the process of securing this country's national defense is and should be viewed with similar seriousness, and those who want to participate should be required to play by the rules or face significant penalties for abusing the process, as was the case in Blackstone's day.

Mr. Chairman, I appreciate the opportunity you have given me to participate in your hearing and stand ready to assist you and the other members of the Committee in developing your recommendations to the full Senate.

STATEMENT

BY

DEREK J. VANDER SCHAAF
DEPUTY INSPECTOR GENERAL
DEPARTMENT OF DEFENSE

BEFORE THE

SUBCOMMITTEE ON FEDERAL SERVICES,
POST OFFICE AND CIVIL SERVICE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ON

# USE OF CONTRACTED ADVISORY AND ASSISTANCE SERVICES WITHIN THE DEPARTMENT OF DEFENSE

Mr. Chairman and members of the Committee, I appreciate the opportunity to appear before you this morning on the topic of the Department of Defense use of contracted advisory and assistance services. Within the Office of the Inspector General, Department of Defense, we have devoted a significant effort to auditing the consulting services area. As a result of these audits, we have provided DoD managers with a number of recommendations for controlling and accounting for consulting services. Management has generally adopted our recommendations, and our recent reports have shown that DoD has made progress in implementing the statutory requirements applicable to this area. Additionally, we are currently working with the President's Council on Integrity and Efficiency to accomplish a Government-wide review of this area. I share your concerns with the consulting services area. I spell out some of my concerns through the use of examples later in this statement. Overall, I trust that my presentation will be helpful in shedding light on DoD's contracting and administration of advisory and consulting service efforts. At your request, I will also address the revolving door restrictions. The OIG, DoD, has consistently supported effective revolving door controls, and as you are aware, I have presented testimony on this subject to several congressional committees.

I am well aware of your long-standing concerns with the use of consultants. I played a prominent role on the staff of the House Appropriations Committee, Defense Subcommittee, in documenting costs and potential abuses in this area. Mr. Chairman, I well

remember your testimony to the House Appropriations Committee in June 1981 on personal services contracts. In fact, I read that testimony, as well as testimony given by the Department witness in preparing for this hearing. You may also remember that as a staff member I proposed and was successful in convincing the Committee to make significant reductions in appropriations for personal services contracts and consulting and advisory contracts in FY's 1979, 1980, 1981, and 1982. For example, the cuts for FY's 1980 and 1981 totaled $300 million and $125 million, respectively. Also, the concerns we raised led to a major General Accounting Office (GAO) review in this area in 1980.

I have not lost any of my vigor for curbing abuses that occur in this process and, thereby, prevent the auctioning off of Government functions to the private sector.

CONSULTING SERVICES

The DoD contracts for a wide variety of consulting services efforts every year. These services can range from studies of ballistics effects of projectiles to studies of a foreign government's political activities. Consulting efforts cover many facets of DoD activities and include work done by individuals, corporations, and large think tanks. Clearly, consulting services is an area subject to misuse. Nevertheless, DoD has many legitimate needs for consultant services. The ever increasing threat this Nation faces has generated the need for more complex and

sophisticated defense systems. Because of this complexity and sophistication, DoD often needs consulting help in planning, developing, acquiring, operating and supporting these systems.

## CONSULTING ARRANGEMENTS

Consultants can work for DoD through two different arrangements. One arrangement is through appointment as temporary employees. The other arrangement is through a formal contract relationship. Consultants hired as employees are a small slice of the total area. We estimate that approximately 800 consultants serve as temporary employees within the Office of the Secretary of Defense, Service headquarters, and the Joint Staff. Other appointed consultants work for Service components and Defense agencies. These consultants are paid an average of $260 each day and are generally employed under 130 days each year. The costs of these consultants was $2.3 million in FY 1986.

Contract consultants are the much larger part of the picture. The amount spent on contract consultants has been one of the recent points of debate. I will address that debate later, but to give perspective here, DoD reported contract consulting and related costs of $3.8 billion for FY 1986. This total represents direct DoD contracts for consulting services and does not include the costs DoD prime contractors may spend on consultants. This latter area is not under the direct control of DoD but the costs

associated with the consultants that prime contractors hire are audited by the Defense Contract Audit Agency.

## CONTROLS OVER CONTRACTED CONSULTING SERVICES

As I noted earlier, management and oversight of DoD's contracted consulting services has been a long-standing problem. The report resulting from the GAO's 1980 study stated that Federal agencies had not made satisfactory progress in improving management of consulting services in over 20 years. That report was the impetus for provisions in Public Law 96-304, later codified in United States Code, Title 31, section 1114(b), requiring agencies to provide specific data on consulting services in conjunction with their budget justification. This statute also required agency inspectors general to report annually on the progress their agency made in instituting effective management controls and improving the accuracy and completeness of data provided to the Federal Procurement Data System on contracts for consulting services.

## INSPECTOR GENERAL, DOD, COMPLIANCE WITH THE STATUTE

In compliance with this statute, the IG, DoD, Audit staff has reviewed the consulting services area annually. We have published five audit reports, and our sixth report is currently being finalized. Our first report in response to U.S.C., Title 31, was published in March 1983 and showed fairly significant problems in implementing accurate reporting procedures for consulting

services. Our second report published in March 1984, showed little progress had been made in correcting the conditions previously identified. These reports included recommendations for addressing more accurate reporting of consulting cost data, requiring requesting activities to identify consulting service contracts clearly, and requiring contracting officers to identify consulting service contracts more explicitly when reporting to the Federal Procurement Data System.

Our next three reports published in February 1985, May 1986, and April 1987, showed progress in improving the accuracy and completeness of consulting service data. However, the audits still showed significant inconsistencies in the consulting service costs reported to Congress through the budget justifications and the Federal Procurement Data System. Additionally, these reports pointed out that consulting services costs embedded in the development and procurement of weapon systems were not being identified and reported.

## NEW DOD DIRECTIVE

Largely as a result of the pressure coming from Congress in the early 1980's that both you and I helped to generate Mr. Chairman, the DoD recognized the need for a new directive covering the consulting service area. The DoD found the OMB Circular A-120 definitions to be too ambiguous, which led to control problems such as inadvertently miscoding contracts into the Federal Procurement

Data System. Also, DoD officials recognized in response to our audit reports that the Federal Procurement Data System was an inadequate reporting mechanism. Shortcomings with the system included exempting the reporting of all contracts below $25,000. In addition, both DoD and the Congress were viewing the term "consulting services" in a larger sense. As a result, the DoD issued a new directive (DoD Directive 4205.2, "Department of Defense Contracted Advisory and Assistance Services (CAAS)," January 27, 1986) that provides definitions for consulting services and associated contract arrangements.

This Directive defines consulting type services as those services DoD acquires from nongovernmental sources to support or improve activities such as the management of organizations or the operation of weapon systems. This Directive establishes policy; assigns responsibilities; and establishes procedures for planning, managing, and reporting these services in DoD. The Directive provides for the following four categories of consulting type services: individual experts and consultants; studies, analyses, and evaluations; management support services; and engineering and technical services.

Individual experts and consultants possess special, current knowledge, or skill. They provide information and advice that enhances understanding of complex issues, or improves the quality and timeliness of decision-making. These experts and consultants

serve on various Defense groups like the Defense Science Board, SDIO Advisory Board, and other "Blue Ribbon" panels.

Studies, analysis, and evaluations are in-depth assessments needed to understand complex issues and improve decision-making. These result in documents that contain or lead to conclusions or recommendations. The issues addressed are of such size, complexity, or uniqueness that individual experts and consultants cannot resolve them alone. These reports are done by contractors such as the BDM Corporation or Booz-Allen, and Hamilton on projects such as developing more cost efficient ways to meet weapon system requirements.

Management support services take the form of advice, training, or direct assistance to ensure more efficient or effective operations. These reports are often done by private sector management services companies or federally funded research and development centers on projects concerning areas such as personnel management, paperwork management, or data collection.

Engineering and technical services are services provided to DoD personnel by a manufacturer of weapon systems or components or by technically qualified DoD contractor representatives. These include information, instruction, training, and hands-on training. An example would be work done by technicians on board aircraft carriers who train our sailors to become familiar with new or updated systems.

The definitions in the new Directive were broader than the definition in the 1980 OMB Circular A-120, which included the words "...purely advisory nature..." in its definition. This phrase caused Federal Procurement Data System coding problems because it was ambiguous and subject to coders' interpretation and judgement. The OMB Circular was updated in 1988 and now incorporates the same definitions as the DoD Directive.

## NEW ACCOUNTING SYSTEM

Also in 1986, the DoD developed a new accounting system for collecting consulting service cost data. The accounting system was developed as a result of requirements included in Public Law 99-145, "Department of Defense Authorization Act," enacted November 8, 1985. The Public Law required that the Secretary of Defense establish in each Military Department an accounting procedure to aid in the identification and control of expenditures for services identified by DoD as contracted advisory and assistance services. The accounting system relies on codes in the accounting citations used in contract funding to tag consulting services efforts and to identify the specific category of consulting services.

## EXTENT OF CONSULTING SERVICES

The discussion of DoD's current definition of consulting services and the accounting system designed to aid in control and reporting of consulting services brings me to the point where I

would like to discuss the dollar values for consulting services. I believe the press and possibly others have misunderstood what DoD has reported for consulting services.

The primary document DoD uses to report to Congress on consulting services is the PB-27 Budget Exhibit. This budget exhibit presents actuals for the prior year and forecasted requirements for the next three years. This exhibit shows two broad areas of costs. The first area labeled "Contracted Advisory and Assistance Services," essentially includes costs falling within the four categories included in the OMB Circular A-120. For FY 1986, DoD reported $1.8 billion in this area. The second area basically represents an expanded definition and is labeled "Other Contract Support Services." The DoD reported an additional $2.0 billion for this second area in FY 1986, giving an overall total of $3.8 billion. Comparable figures for FY's 1987, 1988, and 1989 are $4.2 billion, $4.4 billion and $4.7 billion, respectively.

These amounts are contrasted with the $155 million total previously discussed in this Committee and the press. The $155 million came from the Federal Procurement Data System and represents one of the categories (individual experts and consultants) included in the OMB definition. Furthermore, it is generally recognized that the Federal Procurement Data System is not a reliable vehicle for collecting and reporting consulting costs. In fact, the Office of Federal Procurement Policy has approved a waiver that allows DoD to use the data from the new accounting system in lieu of the

Federal procurement Data System to satisfy statutory reporting requirements.

Because of the problems with the Federal Procurement Data System and the congressional direction in Public Law 99-145, we recently have been focusing our efforts on improving and refining the accounting system DoD has implemented to collect consulting service costs. This accounting system is the source of the data presented in the PB-27 exhibit that I just discussed. Overall, we have concluded that the concepts and procedures in this accounting system are generally sound. This system is relatively new and implementation problems are still causing underreporting. There is no doubt that this system will prove to be far more accurate than the data reported in the Federal Procurement Data System, which was used by the General Accounting Office to provide this Committee with statistics on the purchase of consulting services.

Our most recent audit conducted in compliance with U.S.C., Title 31, section 1114(b) (the report is currently being finalized), found that DoD had not published the new consulting service definitions in the appropriate procurement regulations. Also, the audit showed that field personnel had not been adequately trained in the application of the consulting service definitions. We are in the process of negotiating a resolution with the Department on recommendations for correcting these deficiencies. However, underreporting is likely to continue until these corrective

actions are fully implemented. To illustrate, our most recent audit showed that $8.7 million was reported as the consulting service cost for 49 sampled contracts when the total reported should have been $30.4 million. Our sample did not allow statistical projections so we cannot assume that the same error rate exists in the entire universe. Nevertheless, the audit sample indicated that underreporting was substantial. The Department has for the most part agreed to take the actions needed to resolve this underreporting problem.

## OTHER RELATED REVIEWS

In addition to the audits we have done in direct response to the Title 31 requirements, there have been numerous other reviews that covered aspects of the consulting service area. For example, in our most recent audit we identified over 30 reviews conducted by our staff, the GAO, or Service audit agencies. I believe several of our efforts will be of particular interest to this Committee.

Unsolicited Proposals Draft Report. We have just completed an audit of sole-source procurements resulting from unsolicited proposals. Although not directed at consulting contracts, we believe 14 of the 17 sole-source contracts, where we concluded that preferred procurement practices were not followed, involved contracts within the definition of contract advisory and assistance services. The key issues in this audit were program officials and contracting officers accepting unsolicited proposals that did

not fully meet the requirements for acceptance (proposals that in our opinion were not truly unique and innovative). Related issues included inadequate market searches and insufficient sole-source justification. Inadequate contract management was also a problem for four of the contracts.

To illustrate, on one contract stemming from an unsolicited proposal, the contracting officer's representative instructed the contractor to perform a study that differed significantly from the statement of work contained in the contract. The contractor proposed a study of Soviet military doctrine, capabilities, and threat assessments, focusing on 1984 Soviet/Warsaw Pact exercises. The contracting officer's representative with the approval of the Under Secretary of Defense for Policy authorized the contractor to study the impact of the Soviet involvement in Afghanistan on the Soviet Armed Forces. The contracting officer was neither advised of the change nor was the contract revised. We have provided the Department a series of recommendations to correct these problems. We are currently analyzing the Department's response to this report. The final report should be available in a couple of weeks.

Beltway Contractors Report. Another audit that we previously briefed to the Senate Governmental Affairs Committee, addressed property provided to Washington, D.C., area contractors (which includes a large population of consulting firms). This audit highlighted problems with these contractors acquiring property

without adequate contractual authority, payment of unallowable fees on property acquisitions, and insufficient surveillance over contractors' property systems. The Department agreed to implement the recommendations we provided for correcting these problems.

Hazardous Material Technical Center Contract Report. Another of our audits highlighted the problem of activities adding consulting type work to other contracts. Our 1986 review of the Hazardous Material Technical Center contract identified examples of this problem. This contract, initially awarded in May 1982, for approximately $3 million, had grown to over $26 million by July 1986. This $23 million increase largely resulted from the addition of special study tasks. Although the basic contract did not fall within the consultant services definition, most of the added special studies did. This approach allowed the Defense Logistics Agency to acquire consulting type work without competition and without the controls normally applied to consulting contracts. We recommended that the practice of ordering special studies under the Hazardous Material Technical Center contract be stopped. The Agency initially disagreed, but we prevailed through the audit resolution process--stopping the noncompetitive ordering of special studies under that contract.

Defense Science Board Report. Yet another audit accomplished in 1982 addressed conflict of interest issues relating to individuals appointed to the Defense Science Board. Because of the high risk in this area, we provided recommendations aimed

at strengthening the controls over financial disclosure and conflict of interest reviews. We followed up on this area from August to September 1983 and published a followup report in November 1983. This report showed that considerable progress had been made in assuring that the Defense Science Board was free of conflicts of interest and in compliance with legal requirements. The report also included recommendations for further improvements.

Disclosure of Sensitive Data Report. Digressing a bit from the consulting area, we also issued reports in 1984 addressing DoD personnel release of sensitive material to contractors. One instance involved followup on concerns expressed by the Chairman, Subcommittee on Defense, House Committee on Appropriations. We found that Navy personnel inappropriately released sensitive budget and classified information on the EP-3 program to the Lockheed Corporation. Also, the contractor was given unauthorized access to unedited congressional transcripts on EP-3 aircraft program Committee hearings.

We did not find any criminal misconduct, but we did recommend that the Chief of Naval Material issue a policy statement to all Navy personnel involved with DoD contractors that requires Navy personnel to maintain strict control over classified and sensitive Government information in their relationship with contractors; emphasize in the policy statement the importance of maintaining an "arm's length" working relationship with contractor personnel when compiling data to respond to congressional inquiries;

and investigate the possibility of a security violation. The Navy responded pointing out the policy already expressed in the Defense Acquisition Regulation; however, the Navy did agree to reemphasize these policy matters.

We have also conducted several criminal investigations involving contractors who employ "consultants" that have been accused of obtaining and passing classified documents and information to their clients under questionable circumstances.

PERSONAL SERVICES CONTRACTING

Another concern I have is that some of our consulting service contracts come very close to, or do in fact, violate the prohibition against personal service contracting (Federal Acquisition Regulation 37.104). A personal services contract is "characterized by the employer employee relationship it creates between the Government and the contractor's personnel. The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by Civil Service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract." When we place contractor personnel in Government facilities to work side-by-side with military and Civil Service personnel in decision-making roles, I think we may violate the personal services prohibitions. Contracting

officers and their legal counsel make the calls as to what is, and what is not, personal services. But from my perspective, a very liberal interpretation is normally applied.

## ADDITIONAL REVIEWS SCHEDULED

We are currently working with other inspectors general and the President's Council on Integrity and Efficiency to begin a new effort for additional reviews in the consulting services area. We are planning a two-phased effort. The goal of the first phase will be to arrange for all inspectors general who have not met the Title 31, Section 1114(b), requirements to do so by September 15, 1988. The resulting reports will provide a data base to assist OMB in reporting back to this Committee.

The second phase, which will require a longer period, is being proposed as a full economy and efficiency audit of the contracted advisory and assistance services area. This audit would address such issues as use of sole source contracts, use of unsolicited proposals and use of contract modifications that significantly increase the scope and cost of the original contract. The audit would also cover the process for deciding what work is performed in-house versus work accomplished through contracted advisory and assistance services and the overall cost-effectiveness of these services.

REVOLVING DOOR

You also requested that I comment on the Department's compliance with the revolving door restrictions contained in U.S.C., Title 10, section 2397. This topic is definitely interrelated with the consulting service issues and the current concerns with the integrity of the DoD procurement system.

The Inspector General, DoD, has consistently supported effective and balanced revolving door controls. For example, on October 8, 1985, I testified before the Subcommittee on Investigations, House Committee on Post Office and Civil Service, regarding the revolving door legislation proposed for the Department of Defense FY 1986 Authorization Act. I supported the legislation and recommended several enhancements. My suggestions included:

- requiring a specific cooling-off period between the time an employee stops exercising procurement responsibility for the Government and begins working for a Government contractor.

- imposing contractual sanctions on contractors for violations (in addition to any criminal penalties).

- making the revolving door laws applicable to all branches of the Federal Government.

On January 29, 1986, I testified on revolving door legislation before the Subcommittee on Administrative Law and Government Relations, House Committee on the Judiciary. This testimony addressed H.R. 2554, the Defense Procurement Conflict of Interest Act, which was later passed and codified in U.S.C., Title 10, section 2397. I was particularly pleased with this bill since it addressed several concerns I had raised with the revolving door provisions of the FY 1986 Defense Authorization Act.

I believe DoD has appropriately responded to the requirements of U.S.C., Title 10, section 2397. The statutory provisions were incorporated into a regulation that was given wide distribution in March 1987. Subsequently, the revolving door restrictions were incorporated in DoD Directive 5500.7, "Standards of Conduct."

Because of the short time since these directives were issued we have not performed full scale audits or inspections covering their implementation. However, we do have some insight into the success of implementation through the efforts of our Special Programs unit (includes Special Inquiries and the Hotline).

Our Director for Special Programs states there is evidence that the DoD work force is sensitized to the new revolving door restrictions. When workers encounter a former boss or colleague working for a contractor in any type of questionable arrangement, there is an increasing tendency for them to bring the case to one

of our investigative units. During the past two years we have seen growth in the number of special projects cases involving revolving door issues. In that time period, we estimate we have investigated 55 conflict of interest cases, some of which involve revolving door issues. Several cases are currently under investigation. Many cases do not ultimately disclose any wrongdoing, but this workload does show the DoD work force is alert to this area.

Additionally, within the next year, we may initiate a full scale audit or investigation covering compliance with the new revolving door regulations.

SUMMARY

Mr. Chairman, in summary, we in the OIG, DoD, have devoted substantial efforts to complying with the Title 31, section 1114(b), requirement for reviews of consulting services. We have also done a number of other audits that addressed key aspects of consulting service issues. We have plans for an even more in-depth review of consulting contracts that will be done in DoD and may be done Government-wide under the auspices of the President's Council on Integrity and Efficiency. Finally, we are monitoring implementation of the revolving door restrictions through our Special Programs unit and we are considering initiating a full-scale audit or inspection of this area within the next year.

STATEMENT OF

MR. WILLIAM H. REED
DIRECTOR
DEFENSE CONTRACT AUDIT AGENCY

ON
CONSULTANT COSTS

BEFORE THE UNITED STATES SENATE
GOVERNMENTAL AFFAIRS COMMITTEE
SUBCOMMITTEE ON FEDERAL SERVICES,
POST OFFICE AND CIVIL SERVICE

8 JULY 1988

NOT FOR PUBLICATION UNTIL RELEASED BY THE SUBCOMMITTEE

Mr. Chairman, it is a pleasure for me to appear before this subcommittee to discuss the Defense Contract Audit Agency's (DCAA) mission regarding the review of consultant cost charged to government contracts.

First, though, I want to make sure that there is a clear understanding of DCAA's overall mission. Our charter states that DCAA shall:

> Perform all necessary contract audit for the Department of Defense and provide accounting and financial advisory services regarding contracts and subcontracts to all Department of Defense components responsible for procurement and contract administration. These services will be provided in connection with the negotiation, administration, and settlement of contracts and subcontracts.

I believe that DCAA has done an extremely effective job in carrying out its mission responsibilities. For example, the total savings achieved by the agency has increased from $5.5 billion in FY 1982 to almost $9 billion in FY 1987. Currently, DCAA saves $36 for every $1 of our operating costs.

Our mission does involve reviewing consultant costs that are charged to certain government contracts. There are generally two points in time when a DCAA audit may involve review of consultant costs -- prior to and after contract award.

Let me address first those audits which are done prior to award of a contract. The purpose of these audits is to review a contractor's proposed costs in order to provide the contracting officer with an opinion on the reasonableness of the projections. These audits are typically done only for those contracts where there is not adequate price competition. The contractor submits certified cost or pricing data in support of its proposed cost which may be based on a combination of factual and judgmental data. Indirect expenses, where most consultant costs are normally charged, are typically estimated on a total pool basis relying heavily on historical experience. The auditor would expect any proposed consultant expenses to be supported on the basis of past

allowable incurred cost or current agreements for future service which identify the nature and scope of the effort to be performed.

The second point in time which may involve reviews of consultant cost, are audits after contract award. Each year contractors that have flexibly priced contracts submit a claim for their indirect expenses. These claims must be audited and final rates established in order to determine the final amount that a contractor will be paid on its flexibly priced contracts.

The criteria that DCAA uses to evaluate and determine the propriety of costs charged to government contracts can be broken down into three basic categories:

- Allocability - Are the costs assigned to one or more cost objectives based on the benefits received. In other words, did the work of the consultant benefit the government.

- Reasonableness - A cost is considered reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. This is a broad standard that requires the exercise of a high degree of professional judgement.

O Allowability - Are the costs allowable in accordance with the Federal Acquisition Regulation (FAR) cost principles. Depending on the nature of the consulting service, many of the cost principles may come into play. However, the following cost principles are most often used to evaluate consultant costs:

- FAR 31.205-33 "Professional and consultant service costs." These costs are allowable when reasonable in relation to the services rendered and when supported by evidence of the nature and scope of the service performed. The following are some of the factors that are considered:

* The nature and scope of the service rendered in relation to the service required.

* The necessity of contracting for the service, considering the contractor's capability in the particular area.

* The past pattern of such costs, particularly in the years prior to the award of Government contracts.

* The qualifications of the individual or concern rendering the service and the customary fee charged, especially on non-government contracts.

* Adequacy of the contractual agreement for the service (e.g., description of the service; estimate of time required; rate of compensation; termination provisions).

- FAR 31.205-22 "Legislative lobbying costs." Costs associated with any attempt to influence the outcome of any Federal, State, or local elections or legislation are unallowable. Costs associated with providing technical or factual information directly related to the performance of a contract through hearing testimony, statements, or letters are allowable provided there is a documented request for such information.

- FAR 31.205-50 "Executive lobbying costs." In 1986, a cost principle was added to the FAR that makes certain kinds of executive lobbying costs unallowable. FAR 31.205-50 states:

> Costs incurred in attempting to improperly influence (see FAR 3.401), either directly or indirectly, an employee or officer of the executive branch of the Federal Government to give consideration or act regarding a regulatory or contract matter are unallowable.

FAR 3.401 defines improper influence as follows:

> "Improper influence" as used in this subpart, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any other basis other than the merits of the matter.

- FAR 31.205-38 "Selling costs." Selling activity includes advertising, corporate image enhancement, bid & proposal costs, market planning, and direct selling. While consultants may be used in any of these areas, direct selling is the most sensitive. Direct selling is defined as:

> those acts or actions to induce particular customers to purchase particular products or services of the contractor. Direct selling is characterized by person-to-person contact and includes such activities as familiarizing a potential customer with the contractor's product or services, conditions of sale, service capabilities, etc.

Compensation, fees, or commissions paid to selling agents are allowable if they are reasonable in amount and if payment is made to bona fide employees or agencies maintained by the contractor for purpose of securing business. FAR 3.4 "Contingent fees" contains definitions of bona fide employee and agency. The key to the definition is whether there was improper influence of a government official. Here again, the auditor would have to find evidence of improper influence in order to question the costs on the basis of the cost principle covering selling agents' fees.

FAR 3.4 also imposes a requirement for prospective contractors to disclose to the contracting officer any fees paid to consultants that are contingent upon the award of a government contract. Contingent fees are generally unallowable and are viewed as being contrary to public policy because such arrangements may lead to attempted or actual exercise of improper influence.

Now I would like to touch on the role DCAA plays in the prevention and detection of fraud, including any improper activity on the part of consultants. The contract auditor's primary

responsibility is to perform sufficient tests of costs claimed on Government contracts to reasonably assure that the costs fully comply with the Federal Acquisition Regulations and the terms of the contract. Tests for this purpose rely heavily on evidential matter contained in the contractors' books and records and do not include the broader techniques employed by a criminal investigator. Nonetheless, auditors are expected to and do maintain a high degree of awareness regarding potential indicators of fraud.

We have established training and procedures for our auditors to be alert to potential fraudulent conditions and to report those observations to law enforcement officials. In fact, since 1982, DCAA has made over 900 referrals to investigative organizations. We have also expended significant resources in assisting investigators -- FY 1987 support exceeded 100,000 hours. The result of this cooperative effort between DoD auditors and investigators has been numerous criminal convictions and the recovery of millions of dollars. In addition to training all auditors to be alert for fraud indicators, DCAA has heavily emphasized the prevention of fraud by performing reviews of contractors' systems to ensure they have adequate internal controls. The chances for fraud, waste or abuse is much greater in a system with poor internal controls.

I'm sure one of the questions on your mind today is, why didn't the auditors find the alleged misconduct in the present procurement investigation? From the contract auditors role described above, it's clear that our opportunities to detect certain types of illegal acts is limited. However, I won't know if we should have been more alert or vigilant in our analysis of claimed costs until more details of the investigation are revealed. Obvious questions are -- (i) have the costs for these alleged improper consultant activities been claimed as an allowable cost on our contracts? -- (ii) what type of evidential matter was presented to the auditor if such costs were claimed? -- and (iii) what audit position was taken on the claimed cost if the audits have been completed? Particularly, I'm interested in knowing if our audit practices have worked appropriately and if the cost principles have provided an adequate regulatory basis for evaluation of consultant costs.

Certain of my concerns require immediate action and can be undertaken within the scope of DCAA's normal responsibilities. Therefore, I have initiated the following actions: Of course all of our efforts will be coordinated with the DoD General Counsel to make sure that we do not impede in any way the ongoing investigation.

First, we have reemphasized the current guidance to our field auditors and will be keeping them informed of the audit ramifications as issues are disclosed. We will also assess the need for any changes in our current guidance and determine if any additional specialized training in the area of reviewing consultant costs is warranted in light of the recent revelations.

Secondly, I intend to accelerate the review of consultant costs at major contractor locations where claims have been submitted. This will allow us to review these costs on a current basis and assure that any inappropriate costs are eliminated from contract billings at the earliest possible time.

Finally, as we conduct the accelerated audits, a critical analysis will be made of the current regulations to determine if they require strengthening. Our audit experience will be used to support any recommendations for change forwarded to the Defense Acquisition Regulatory (DAR) Council for consideration.

On the issue of regulatory change, I would like to point out a misinterpretation of the access to records statutes (10 U.S.C. 2306 (f) and 2313 (a)) and the FAR provisions that I believe may hinder our efforts to review consulting costs.

My concern stems primarily from two recent court decisions which held that DCAA did not have a right to review certain contractor records. Consider the following excerpt from a decision by the United States Court of Appeals for the Fourth Circuit:

> Under DCAA's view, the work product of any NNS unit whose costs constitute general and administrative expenses must be made available to DCAA so that it may see whether the government is "getting its money's worth." Yet the salaries of the executives of NNS, its board members, and its legal counsel are all charged as general and administrative expenses. DCAA is surely entitled to review

> the salaries of these NNS employees, but it does not require access to the work product of each of them in order to perform its cost accounting function....
>
> DCAA is therefore fully able to conduct a review of the effectiveness of NNS's accounting practices. What it cannot do under (10 U.S.C.) 2313(a) or 2306(f)(5) is demand access to the analysis contained in the confidential work product of NNS's own audit staff.

This decision says DCAA only needs access to cost records and not the actual work product. This could prove to be a substantial impediment to our ability to review costs like those incurred by consultants. The cost principle FAR 31.205-33, that I mentioned above, calls for the auditor to evaluate evidence of the nature and scope of services rendered to arrive at conclusions regarding necessity and reasonableness. FAR 31.205-50 on executive lobbying costs requires the auditor to determine if the specific activities of any contractor employee, as well as consultants, constituted improper influence, either directly or indirectly, of a Government employee. How can the auditor be expected to make such assessments adequately without access to the work product of consultants?

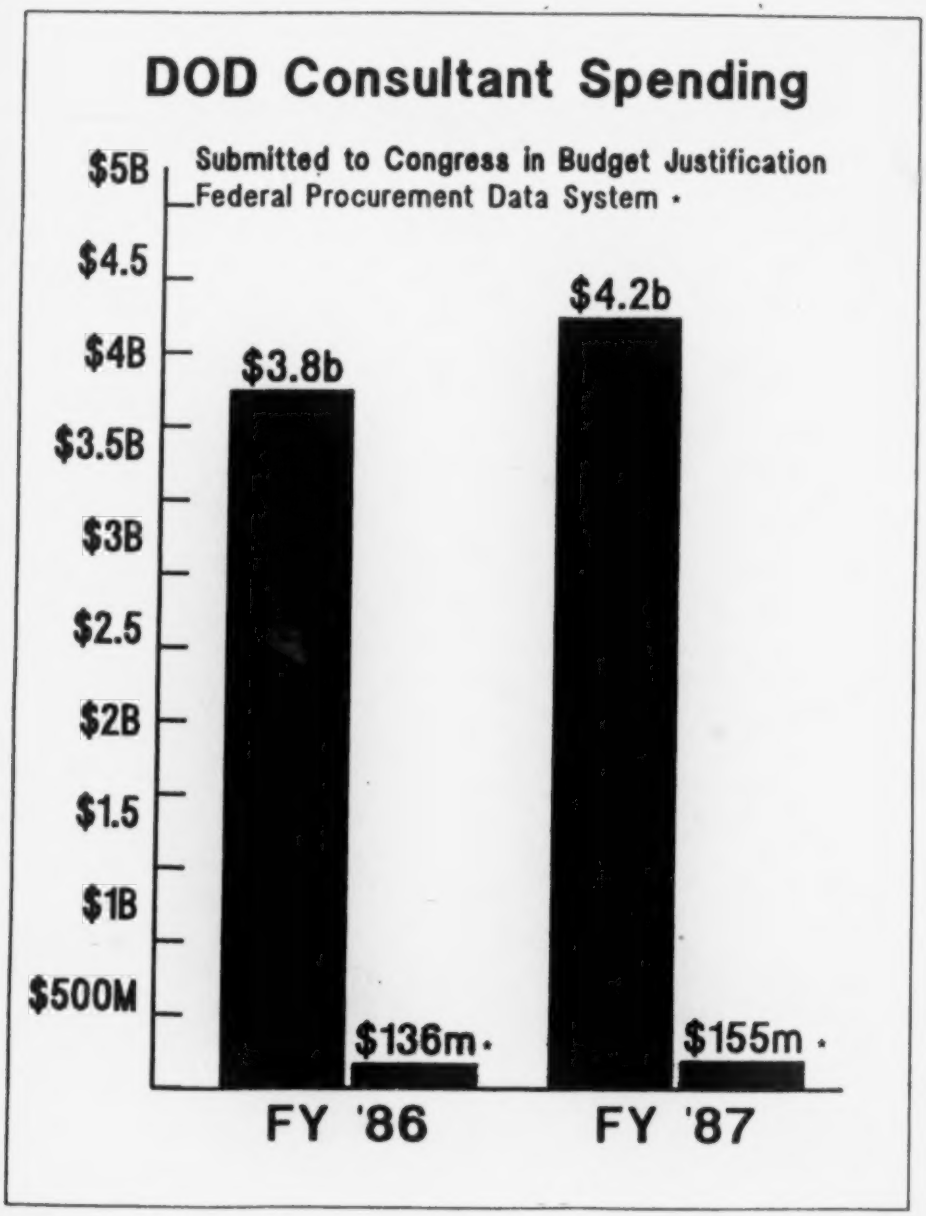
The circuit court of appeals decision also stated:

> The procurement system, of which DCAA is part, relies on private contractors for the production of materials needed for the national defense. Like other private firms, these contractors have an interest in maintaining the confidentiality of their internal communications. This may be especially true with regard to functions such as internal auditing, which rely for their effectiveness on the candor that confidentiality allows. Nonetheless, the government, by statute or contractual provision, may certainly demand access even to materials such as these. This access must, however, be based on a specific authorization. We can find no such authorization for DCAA's subpoena of the NNS internal audits.

Several years ago we presented a proposal to the DAR Council to change the access to records clause to clarify exactly this issue. We believe that if our recommended changes are adopted they would clear up most of the access to records problems we have been experiencing. The DAR Council is still considering the proposal and I am hopeful that they will act favorably on it.

We have also entered into discussions with the GAO and the DoD Inspector General regarding access to records and the court's interpretation of current statutory access provisions. These discussions have focused on our concern that these recent court decisions may so severely limit our future access rights that DCAA may not be able perform our audits in accordance with the auditing standards established by the Comptroller General. Both the IG and the GAO are looking into this issue.

Mr. Chairman, this concludes my prepared remarks and I will be happy to answer any questions.


DOD Consultant Spending
Submitted to Congress in Budget Justification
Federal Procurement Data System
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| Nierenberg, Prof. William A. | Director Emeritus<br>Scripps Institution of Oceanography |
| Noyce, Dr. Robert N. | President, Intel Corp. |
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| Wade, Dr. James P., Jr. | Private Consultant |
| Walsh, Mr. John B. | VP and Chief Scientist<br>Boeing Military Airplane Co. |

INVESTIGATIVE STATUTORY TESTIMONIAL SUBPOENA AUTHORITY

| Statute | Agency | Purpose |
|---|---|---|
| 5 U.S.C. § 1205 | Merit Systems Protection Board | Investigations relating to hearings within its jurisdiction |
| 5 U.S.C. § 1507 | Merit Systems Protection Board | Investigations of political activity of certain state and local employees |
| 5 U.S.C. § 7131 | Federal Labor Relations Authority | Investigations within its jurisdiction |
| 7 U.S.C. § 15 | Commodity Futures Trading Commission | Investigations under the Commodity Exchange Act, 7 U.S.C. § 1 et seq. |
| 7 U.S.C. § 87f | Administrator of the Federal Grain Inspection Service | Investigations under the United States Grain Standards Act, 7 U.S.C. §§ 71 et seq. |
| 7 U.S.C. § 511n | Secretary of Agriculture | Tobacco inspection |
| 7 U.S.C. § 2115 | Secretary of Agriculture | Investigations under the Cotton Research and Promotion Act, 7 U.S.C. 2101 et seq. |
| 7 U.S.C. § 2622 | Secretary of Agriculture | Inspections under the Potato Research and Promotion Act, 7 U.S.C. §§ 2601 et seq. |
| 7 U.S.C. § 2717 | Secretary of Agriculture | Investigations under the Egg Research and Consumer Information Act, 2 U.S.C. §§ 2701 et seq. |

INVESTIGATIVE STATUTORY TESTIMONIAL SUBPOENA AUTHORITY

| Statute | Agency | Purpose |
|---|---|---|
| 7 U.S.C. § 2917 | Secretary of Agriculture | Inspections under the Beef Research and Information Act, 7 U.S.C. §§ 2901 et seq. |
| 7 U.S.C. § 3412 | Secretary of Agriculture | Investigations under the Wheat and Wheat Foods Research and Nutrition Education Act, 7 U.S.C. §§ 3401 et seq. |
| 7 U.S.C. § 4317 | Secretary of Agriculture | Investigations under the Floral Research and Consumer Information Act, 7 U.S.C. 4301 et seq. |
| 7 U.S.C. § 4511 | Secretary of Agriculture | Investigations under the Dairy Production Stabilization Act of 1983, 7 U.S.C. §§ 4501 et seq. |
| 8 U.S.C. § 1446 | Attorney General or Immigration and Naturalization Service | Investigation of naturalization petitioner |
| 12 U.S.C. § 1464 | Federal Home Loan Bank Board | Investigations with respect to Federal Savings and Loan Associations |
| 12 U.S.C. § 1730 | Federal Savings and Loan Insurance Corporation | Examinations of insured institutions |
| 12 U.S.C. § 1786 | National Credit Union Administration Board | Investigations of insured credit unions |
| 12 U.S.C. § 1818 | Bank supervisory agencies | Investigations connected with the Federal Deposit Insurance Corporation programs |
| 12 U.S.C. § 2404 | National Commission on Elections Transfer | Investigations within its jurisdiction |

INVESTIGATIVE STATUTORY TESTIMONIAL SUBPOENA AUTHORITY

| Statute | Agency | Purpose |
|---|---|---|
| 12 U.S.C. § 2617 | Secretary of Housing and Urban Development | Investigations under the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 et seq. |
| 15 U.S.C. § 57b-1* | Federal Trade Commission | Investigation of unfair or deceptive methods of competition |
| 15 U.S.C. § 77s | Security and Exchange Commission | Investigations under the Securities Act of 1933, 15 U.S.C. §§ 77a et seq. |
| 15 U.S.C. § 77uuu | Securities and Exchange Commission | Investigations under the Trust Indenture Act of 1939, 15 U.S.C. §§ 77aaa et seq. |
| 15 U.S.C. § 78O | Securities and Exchange Commission | Investigations under the Securities Exchange Act of 1934, 15 U.S.C. §§78a et seq. |
| 15 U.S.C. § 79r | Securities and Exchange Commission | Investigations under the Public Utility Holding Company Act of 1935, 15 U.S.C. §§ 79 et seq. |
| 15 U.S.C. § 80b-9 | Securities and Exchange Commission | Investigations relating to investment companies and advisors under 15 U.S.C. §§80b-1 et seq. |
| 15 U.S.C. § 80a-41 | Securities and Exchange Commission | Investigations relating to investment companies and advisors under 15 U S.C. §§ 80a-1 et seq. |
| 15 U.S.C. § 634 | Small Business Administration | Investigations under the Small Business Act, 15 U.S.C. 631, et seq. |

*Civil investigative demand

INVESTIGATIVE STATUTORY TESTIMONIAL SUBPOENA AUTHORITY

| Statute | Agency | Purpose |
|---|---|---|
| 15 U.S.C. § 687b | Small Business Administration | Investigations relating to revocation of license granted under 15 U.S.C. § 671 et seq. |
| 15 U.S.C. § 717m | Secretary of Energy | Investigations under the natural gas provisions of 15 U.S.C. §§ 717 et seq. |
| 15 U.S.C. § 772 | Secretary of Energy | Investigations under the Federal Energy Act of 1974, 15 U.S.C. §§ 761 et seq. |
| 15 U.S.C. § 1312* | Attorney-General or Anti-trust Division of Department of Justice | Civil antitrust investigation |
| 15 U.S.C. § 1401 | Secretary of Transportation | Investigations under the National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. §§ 1381 et seq. |
| 15 U.S.C. § 1714 | Secretary of Housing and Urban Development | Investigations under the Interstate Land Sales Full Disclosure Act, 15 U.S.C. § 1701 et seq. |
| 15 U.S.C. § 1825 | Secretary of Agriculture | Investigations under the Horse Protection Act, 15 U.S.C. §§ 1821 et seq. |
| 15 U.S.C. § 1914 | Secretary of Transportation | Investigations to carry out the bumper standards law; Cost Saving Act, 15 U.S.C. §§ 1961 et seq. |
| 15 U.S.C. § 1944 | Secretary of Transportation | To carry out the purposes of the automobile consumer information study law, 15 U.S.C. § 1941 et seq. |

INVESTIGATIVE STATUTORY TESTIMONIAL SUBPOENA AUTHORITY

| Statute | Agency | Purpose |
|---|---|---|
| 15 U.S.C. § 2005 | Secretary of Transportation the Environmental Protection Administrator | Investigations under the law requiring fuel economy standards, 15 U.S.C. § 2001 et seq. |
| 15 U.S.C. § 2076 | Consumer Product Safety Commission | Investigations within its jurisdiction |
| 15 U.S.C. § 4013a | Attorney General or Anti-trust Division of Department of Justice | Investigations connected with issuance of export trade certificates of review |
| 16 U.S.C. § 773 i' | Secretary of Commerce | Law enforcement investigations under the Northern Pacific Halibut Act of 1982, 16 U.S.C. §§ 773 et seq. |
| 16 U.S.C. § 825f | Secretary of Energy and the Federal Energy Regulatory Commission | Investigations under the Federal Power Act, 16 U.S.C. §§ 791 et seq. |
| 18 U.S.C. § 1968* | Attorney General | Racketeer Influenced Corrupt Organizations (RICO) statute investigations |
| 19 U.S.C. § 2321 | Secretary of Labor | Investigations connected with trade adjustment assistance |
| 21 U.S.C. § 876 | Attorney General | Investigations relating to controlled substance law under 21 U.S.C. §§ 801 et seq. |
| 21 U.S.C. § 967 | Secretary of the Treasury | Investigations relating to smuggling of controlled substances |
| 22 U.S.C. § 287c | Secretary of Treasury | Investigations relating to Rhodesian sanctions |

INVESTIGATIVE STATUTORY TESTIMONIAL SUBPOENA AUTHORITY

| Statute | Agency | Purpose |
|---|---|---|
| 22 U.S.C. § 1622 | Foreign Claims Settlement Commission | Investigations of claims within its jurisdiction |
| 22 U.S.C. § 2824 | Commission on the Organization and Conduct of Foreign Policy | Investigations within its jurisdiction |
| 22 U.S.C. § 3004 | Commission on Security and Cooperation in Europe | Investigations within its jurisdiction |
| 29 U.S.C. § 161 | National Labor Relations Board | Investigations relating to representative elections and unfair labor practices |
| 29 U.S.C. § 1303 | Pension Benefit Guaranty Corporation | Investigations Under the Employee Retirement Income Security Act of 1924, 29 U.S.C. §§ 1301 et seq. |
| 29 U.S.C. § 1862 | Secretary of Labor | Investigations under the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. § 1801 et seq. |
| 30 U.S.C. § 1717 | Secretary of Interior | Investigations under the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. §§ 1701 et seq. |
| 33 U.S.C. § 506 | Secretary of Transportation | Investigative hearings relating to reasonableness of bridge tolls |
| 33 U.S.C. § 1907 | Secretary of Transportation | Investigations under the Act to Prevent Air Pollution from Ships, 33 U.S.C. §§ 1901 et seq. |
| 38 U.S.C. § 3311 | Administrator, Veterans Administration | Aid to claimants making claims, investigations of any matter within jurisdiction of the Veterans' Administration |

INVESTIGATIVE STATUTORY TESTIMONIAL SUBPOENA AUTHORITY

| Statute | Agency | Purpose |
|---|---|---|
| 42 U.S.C. § 405 | Secretary of Health and Human Services | Investigations under Title II of the Social Security Act, which concerns federal old-age, survivors, and disability insurance benefits |
| 42 U.S.C. § 5413 | Secretary of Housing and Urban Development | Investigations relating to functions under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. §§ 5401 et seq. |
| 45 U.S.C. § 40 | Secretary of Transportation | Investigations connected to railway accidents |
| 45 U.S.C. § 362 | Railroad Retirement Board | Investigations within its jurisdiction |
| 46 U.S.C. § 1124 | Secretary of Commerce | For functions under merchant marine legislation, 46 U.S.C. §§ 1101 et seq. |
| 46 U.S.C. App. § 1717 | Advisory Commission on Conferences in Ocean Shipping | To carry out its functions |
| 47 U.S.C. § 409 | Federal Communications Commission | Investigations under the Communications Act of 1934, 47 U.S.C. §§ 151 et seq. |
| 49 U.S.C. § 502 | Secretary of Transportation | Investigations under legislation relating to motor carriers of migrant workers |

INVESTIGATIVE STATUTORY TESTIMONIAL SUBPOENA AUTHORITY

| Statute | Agency | Purpose |
|---|---|---|
| 49 U.S.C. § 305 | Interstate Commerce Commission | Investigations within its jurisdiction under the Interstate Commerce Act, 49 U.S.C. §§ 10101 et seq. |
| 49 U.S.C. § 10321 | Interstate Commerce Commission | Investigations under part II of the Interstate Commerce Act, 49 U.S.C. § 302 et seq. relating to motor carriers |
| 50 U.S.C. App § 643a | Any federal agency involved as the Chairman of the War Production Board | Investigation of war contracts |
| 50 U.S.C. App § 2001 | Foreign Claims Settlement Commission | Investigation under the War Claims Act of 1948 |

DEPARTMENT OF DEFENSE

# AUDIT REPORT

SOLE-SOURCE PROCUREMENTS RESULTING FROM
UNSOLICITED PROPOSALS

No. 88-197 August 25, 1988

*Office of the Inspector General*

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

August 25, 1988

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION
UNDER SECRETARY OF DEFENSE FOR POLICY
ASSISTANT SECRETARY OF THE ARMY (FINANCIAL MANAGEMENT)
ASSISTANT SECRETARY OF THE NAVY (FINANCIAL MANAGEMENT)
COMPTROLLER OF THE AIR FORCE
DIRECTOR, DEFENSE LOGISTICS AGENCY

SUBJECT: Report on the Audit of Sole-Source Procurements Resulting from Unsolicited Proposals (Report No. 88-197 )

This is our final report on the Audit of Sole-Source Procurements Resulting from Unsolicited Proposals for your information and use. Comments on a draft of this report were considered in preparing the final report. The audit was made from January 1987 through January 1988. Our objectives were to evaluate the need for items purchased as a result of unsolicited proposals, to determine if appropriate procurement practices were followed, and to determine if contractors delivered items and were paid in accordance with contract requirements. For fiscal year 1986, DoD reported $104.2 million for sole-source contract actions resulting from unsolicited research proposals. Other categories of unsolicited proposals were not separately identified in the DoD reporting system.

From January 1987 through January 1988, we reviewed 66 sole-source contracts, valued at $40.6 million, that resulted from unsolicited proposals at 6 contracting activities (43 of the contracts were for unsolicited research proposals). Items purchased were consistent with the requiring activities' missions. However, preferred procurement practices were not followed in accepting unsolicited proposals and awarding 17 sole-source contracts. Also, internal controls applicable to the administration of five contracts at Defense Supply Service - Washington were not adequate to ensure that contractors complied with contract requirements and that payments to contractors were appropriate. The results of the audit are summarized in the following paragraphs, and the details, audit recommendations, and management comments are contained in Part II of this report.

Program officials accepted unsolicited proposals that were not innovative and unique, and contracting officers subsequently awarded 17 sole-source contracts with a value of $5.2 million

based on inadequate justifications or ineffective market searches. This sole-source contracting was contrary to the Competition in Contracting Act and the Federal Acquisition Regulation, which require the use of full and open competition to the maximum extent possible. The use of noncompetitive procurement procedures did not ensure that DoD obtained the most advantageous contracts. We recommended that the Under Secretary of Defense for Acquisition issue a memorandum to the DoD Components that: reemphasizes to DoD program officials to return unsolicited proposals to offerors when the proposals are not innovative and unique; provides additional guidance on market research by defining what constitutes an adequate market search; and directs contracting officers to challenge procurements resulting from unsolicited proposals when there is doubt concerning the validity of the sole-source justifications or adequacy of the market searches (page 5).

Contract administration on five Defense Supply Service - Washington contracts was not adequate to ensure that contractors complied with contract requirements and that payments to contractors were appropriate. As a result, constructive changes to contracts occurred, and procuring contracting officers have been placed in a position of ratifying unauthorized commitments and negotiating retroactive price adjustments. Three contractors were paid about $52,000 although they had not fulfilled all their contract requirements. In addition, required items were either not delivered or were being delivered late, which diminished their value (page 13).

We recommended in Finding B. that the Under Secretary of Defense for Policy advise personnel under his cognizance, designated as contracting officer representatives, to comply with their appointment letters and not direct or allow contractors to take action outside the scope of the contracts, and refer possible problems or proposed changes to the contracting officer. We recommended that the Assistant Secretary of the Navy (Shipbuilding and Logistics) request the contracting officer representative on contract MDA903-86-C-0158 to comply with the requirements specified in his appointment letter. We also recommended that the Director, Defense Supply Service - Washington, require contracting officers to: reemphasize, in a memorandum to their contracting officer representatives, the importance of complying with the appointment letters; follow up with contracting officer representatives when progress reports or deliverable items on contracts are not provided in a timely manner; add a requirement to the appointment letter requiring contracting officer representatives to provide a written contract status report to the contracting officer at least quarterly; incorporate adequate contractor progress and financial status reporting requirements in contracts; and review contractor performance on three specific contracts to determine if a downward price adjustment, a reduction in fee, or a disallowance of costs and billings are warranted.

This report identifies internal control deficiencies as defined by Public Law 97-255, Office of Management and Budget Circular A-123, and DoD Directive 5010.38. Finding B. disclosed that contract administration on five Defense Supply Service - Washington contracts was not adequate to ensure that contractors complied with contract requirements and that payments to contractors were appropriate. Implementation of Recommendations B.1., B.3.a., B.3.b., B.3.c., and B.3.d. will correct these internal control deficiencies. Therefore, a copy of this report will be provided to the Deputy Assistant Secretary of Defense (Administration), Office of the Assistant Secretary of Defense (Comptroller), who is the senior official responsible for internal controls within the Office of the Secretary of Defense.

We provided a draft of this report to the addressees and the Director, Defense Supply Service - Washington, on March 30, 1988. The comments are summarized in Part II of this report, and the complete texts of the responses are included in Appendixes F through L.

The Assistant Secretary of Defense (Production and Logistics), responding for the Under Secretary of Defense for Acquisition, stated that a recent revision of Defense Federal Acquisition Regulation Supplement 6.302-1(a)(70) published in Defense Acquisition Circular 86-11 (dated March 31, 1988) was germane to many of the 17 cases in the report, and that it would be beneficial to evaluate the effect of the recent changes before initiating new ones. The Assistant Secretary concurred with Recommendations A.1., A.2., and A.3. to the extent of reemphasizing the existing and new regulations. The management comments did not comply with the requirements of DoD Directive 7650.3 because the response did not specifically address the recommendations or the problems identified in Finding A. Accordingly, we request that the Under Secretary of Defense for Acquisition reconsider this position and respond to the final report, indicating concurrence or nonconcurrence with each of the recommendations. If you concur, describe the corrective actions taken or planned, the completion dates for actions already taken, and the estimated dates for completion of planned actions. If you nonconcur, please state your specific reasons. The comments received from the Air Force and the Navy on the recommendations in Finding A. support the need for these recommendations.

The Assistant Secretary of the Navy (Shipbuilding and Logistics) and the Deputy Assistant Secretary of the Air Force (Acquisition Management and Policy) concurred with Recommendations A.1., A.2., and A.3. that were addressed to the Under Secretary of Defense for Acquisition, which call for a reemphasis on the innovative and unique requirements of unsolicited proposals and the need to provide guidance on making

an adequate market search before accepting a sole-source justification. The Office of the Assistant Secretary of the Navy (Shipbuilding and Logistics) issued guidance on May 6, 1988, to implement the recommendations within the Navy. The Navy's response to Recommendation B.2. in the report was responsive, and additional comments from the Navy and Air Force are not required.

The Director, Net Assessment, nonconcurred with the findings, but did agree to remind staff personnel to comply with the requirements on serving as contracting officer representatives. The Director's extensive, unsupported comments attempted to justify the perceived legitimacy of the contract awards. We have reviewed the comments and have not changed our conclusions. We request that the Under Secretary of Defense for Policy provide an implementation date and description of the corrective action taken on Recommendation B.1. and reconsider his position on the finding in the reply to the final report.

The Administrative Assistant to the Secretary of the Army concurred with Recommendation B.3. except for Recommendation B.3.d. However, the comments were not fully responsive to Recommendations B.3.a., B.3.b., B.3.c., B.3.e., B.3.f., and B.3.g. (see our response to management comments in Part II for details). The Administrative Assistant nonconcurred with Recommendation B.3.d. to add a requirement that contracting officer representatives provide a written contract status report to the contracting officer at least quarterly. The Administrative Assistant stated that improving the meaningful communication between the contracting officer representative and the contracting officer should result from closer adherence to the reporting requirements specified in the contract and the appointment letter. The Administrative Assistant also stated that increased customer agency oversight of contracting officer representatives' performance is required to discipline the system rather than additional paperwork requirements. We request that the Army reconsider its response to Recommendation B.3. in the reply to the final report.

Based on the Navy's comments, we redirected Recommendation B.2. to the Assistant Secretary of the Navy (Shipbuilding and Logistics). The Navy's response to Recommendation B.2. conformed to the provisions of DoD Directive 7650.3. Accordingly, additional management comments on the final report are not required. The Navy also provided comments on Recommendation B.1. that was addressed to the Under Secretary of Defense for Policy and on Recommendation B.3. that was addressed to the Director, Defense Supply Service - Washington. The Navy concurred with the recommendations and issued a memorandum to Navy activities emphasizing the management of unsolicited proposals and contracting officers representatives' responsibilities.

DoD Directive 7650.3 requires that all audit recommendations be resolved within 6 months of the date of the final report. The Under Secretary of Defense for Acquisition, the Under Secretary of Defense for Policy, and the Army should provide their responses to this report with additional information within 60 days of the date of the report.

Please contact Mr. Garold E. Stephenson, Program Director, on (202) 694-3995 (AUTOVON 224-3995) or Mr. Joseph P. Doyle, Project Manager, on (202) 693-0371 (AUTOVON 223-0371) if you have any questions concerning the final report. Copies of this report are being provided to the activities listed in Appendix N.

The cooperation and courtesies extended to the audit staff are appreciated.

Stephen A. Trodden
Assistant Inspector General
for Auditing

Enclosures

cc:
Secretary of the Army
Secretary of the Navy
Secretary of the Air Force

# REPORT ON THE AUDIT OF SOLE-SOURCE PROCUREMENTS RESULTING FROM UNSOLICITED PROPOSALS

## TABLE OF CONTENTS


| | Page |
|---|---|
| TRANSMITTAL MEMORANDUM/EXECUTIVE SUMMARY | i |
| PART I - INTRODUCTION | 1 |
| Background | 1 |
| Objectives and Scope | 2 |
| Prior Audit Coverage | 3 |
| PART II - FINDINGS AND RECOMMENDATIONS | 5 |
| A. Sole-Source Contract Awards | 5 |
| B. Contract Administration | 13 |
| APPENDIXES | See Next Page |


Prepared by:
Acquisition Support
Programs Division
Project No. 7AP-026

## LIST OF APPENDIXES


| | | Page |
|---|---|---|
| APPENDIX A | - Definition of Acronyms | 25 |
| APPENDIX B | - Summary Schedule of Contracts Reviewed | 27 |
| APPENDIX C | - Schedule of Contracts Based on Invalid Unsolicited Proposals | 29 |
| APPENDIX D | - Synopsis of Contracts Based on Invalid Unsolicited Proposals | 31 |
| APPENDIX E | - Summary of Prior Audit Coverage | 43 |
| APPENDIX F | - Comments from the Assistant Secretary of Defense (Production and Logistics) | 45 |
| APPENDIX G | - Comments from the Under Secretary of Defense for Policy, Director, Net Assessment | 47 |
| APPENDIX H | - Detailed Audit Responses to the Under Secretary of Defense for Policy, Director, Net Assessment, Comments | 59 |
| APPENDIX I | - Comments from the Department of the Army | 69 |
| APPENDIX J | - Comments from the Department of the Navy | 73 |
| APPENDIX K | - Comments from the Department of the Air Force | 77 |
| APPENDIX L | - Comments from the Defense Logistics Agency | 79 |
| APPENDIX M | - Activities Visited | 81 |
| APPENDIX N | - Final Report Distribution | 83 |

## REPORT ON THE AUDIT OF SOLE-SOURCE PROCUREMENTS RESULTING FROM UNSOLICITED PROPOSALS

### PART I - INTRODUCTION

#### Background

An unsolicited proposal is a written offer to perform a proposed task or effort, which an offeror initiates without solicitation by the Government, with the objective of obtaining a contract. DoD policy is to encourage submission of unsolicited proposals and to give them serious consideration. A valid unsolicited proposal must be innovative and unique, must be independently originated and developed by the offeror, must be prepared without Government assistance, must include sufficient detail to permit evaluation of its benefits, and must not resemble a pending acquisition. The unsolicited proposal must be evaluated in terms of the offeror's ability to meet the Government's needs. However, this alone is not sufficient justification for awarding a sole-source contract. The substance of the unsolicited proposal must not be available from another source.

The Competition in Contracting Act of 1984 (Public Law 98-369) authorizes Federal agencies to use noncompetitive acquisition procedures when the needed property or service is available from only one responsible source and no other type of property or service will satisfy the need. For an acquisition resulting from an unsolicited research proposal, the proposal should demonstrate a unique and innovative concept not otherwise available to the Government. The Department of Defense Appropriation Act of 1987 (Public Law 99-500) amended the Competition in Contracting Act to permit noncompetitive acquisition for an unsolicited proposal that offers a service if the source demonstrates a unique capability to provide the service. Federal Acquisition Regulation, Subpart 15.5, implements these laws and prescribes policies and procedures for submission, receipt, evaluation, and acceptance of unsolicited proposals by DoD and other Federal agencies.

For fiscal year 1986, DoD reported 51,504 contracts valued at $26.8 billion that were awarded noncompetitively. However, the reporting system does not separately identify the number or dollar value of sole-source (noncompetitive) contracts resulting from unsolicited proposals. Sole-source contracts that resulted from unsolicited "research" proposals (a major subset of the sole-source contracts resulting from unsolicited proposals) can be identified by coding on the DD Form 350, "Individual Contracting Action Report." For fiscal year 1986, DoD procurement activities reported contractual actions valued at $104.2 million for unsolicited research proposals. Other sole-source contracts resulting from unsolicited proposals were reported under other codes, such as unique source or urgency.

During our audit, the Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council were evaluating proposed changes to the Federal Acquisition Regulation that would include a definition of the term "unique and innovative." The proposed definition provides that an unsolicited research proposal would be considered unique and innovative if, in the opinion of the Government evaluator, it is a product of original thinking submitted in confidence by one source; if it contains new, novel or changed concepts, approaches or methods; if it was not previously submitted by someone else; and if it is not otherwise available within the Government. However, we do not believe this proposed change will significantly influence officials to reject invalid unsolicited proposals because other factors, such as the desire to use less time-consuming noncompetitive procedures and the desire to use particular contractors, will continue to be considered.

Objectives and Scope

The objectives of the audit were to evaluate the need for items purchased as a result of unsolicited proposals, to determine if appropriate procurement practices were followed in acquiring these goods and services, and to determine if contractors submitted deliverable items and were paid in accordance with contract requirements. We reviewed 66 sole-source contracts awarded during fiscal year 1986 at 6 contracting activities that resulted from unsolicited proposals. These contracts were valued at $40.6 million. Appendix B is a summary schedule of the contracts reviewed. The six contracting offices, which are identified in Appendix M, were judgmentally selected. These offices accounted for 53 percent of the $104.2 million that was shown in the DD Form 350 Reporting System for fiscal year 1986 for 322 sole-source contract actions resulting from unsolicited research proposals. Of the 66 contracts, 49 resulted from unsolicited research proposals according to the DD Form 350 Reporting System. The remaining 17 sole-source contracts were selected from sole-source awards that the DD Form 350 Reporting System showed were based on unique source or urgency. We evaluated the unsolicited proposals, the justifications for other than full and open competition, contractor submission of deliverable items, contractor payment data, and other documentation related to the contracts. We evaluated management controls applicable to the processing of unsolicited proposals and the procurement and contract administration functions during our review of records and procedures. We also interviewed program, procurement, and contractor personnel to accomplish our audit objectives. Activities visited during the audit are listed in Appendix M. We made this program results audit from January 1987 through January 1988 in accordance with auditing standards issued by the Comptroller General of the United States, as implemented by the Inspector General, DoD.

Prior Audit Coverage

The Inspector General, DoD; the Naval Audit Service; and the General Accounting Office have conducted audits that addressed sole-source contracting and, in part, sole-source contracts that resulted from unsolicited proposals. A summary of this prior audit coverage is in Appendix E.

## PART II - FINDINGS AND RECOMMENDATIONS

### A. Sole-Source Contract Awards

#### FINDING

DoD program officials and contracting officers were not doing enough to ensure that sole-source contracts were only awarded on the basis of valid unsolicited proposals as required by the Competition in Contracting Act and the Federal Acquisition Regulation (FAR). For 17 (26 percent) of 66 sole-source contracts we reviewed, program officials accepted unsolicited proposals that were not innovative and unique. This occurred because program officials did not perform thorough market searches to identify other potential sources that could perform the work, or because they preferred less time-consuming sole-source contracts or a particular contractor to do the work. Contracting officers subsequently awarded sole-source contracts based on inadequate justifications and inadequate market searches. As a result, opportunities to obtain lower prices and potentially better ideas, designs, technology, products, and services were missed on the 17 sole-source contracts, valued at $5.2 million.

#### DISCUSSION OF DETAILS

Proposal Acceptance. Program officials did not always follow FAR requirements in accepting unsolicited proposals. Specifically, the proposals for 17 contracts did not demonstrate innovative and unique methods, approaches, or concepts, or show that the offerors were the only sources capable of performing the work. These 17 contracts are listed in Appendix C, and a synopsis of each contract is listed in Appendix D. Of the 17 contracts, 16 involved a service or study effort, and 1 contract was for scientific research. Our sample included cases where program officials used the unsolicited proposal as a basis for justifying sole-source awards because the program officials preferred less time-consuming sole-source contracts or they wanted a particular contractor to do the work.

The Assistant Secretary of Defense for International Security Affairs approved contract MDA903-86-C-0044 based on an unsolicited proposal for a study of U.S. security interests in the South Pacific. The contractor, Pacific Forum, was responsible for arranging a conference in Melbourne, Australia, and for delivering an executive summary, policy recommendations and analyses, and revised papers by each panelist. The justification supporting the sole-source procurement stated the contractor had unique qualifications because the contractor, headed by a retired Navy Rear Admiral, had previously conducted a project dealing with Soviet policies in the Asia-Pacific region. The

justification also stated competitive procedures would take too long. The unsolicited proposal for this study was not valid. The requirement for the study effort had been previously considered for competitive procurement, but was dropped because of a realignment of research priorities. In written comments on the proposal, an official in the Office of the Under Secretary of Defense for Policy, responsible for reviewing proposed studies, stated it ". . . is essentially a cut-and-paste job drawing on the previous competitive request . . ." and that "Nothing about the proposal strikes me as either unique or innovative . . . ." The official also stated that he was not ". . . aware of any unique qualifications possessed by Pacific Forum which would make that organization any more qualified than a number of other contractors." However, the proposal was accepted by the Assistant Secretary of Defense (International Security Affairs). Based on available documentation and telephone inquiries, we identified another potential source for this work. An official at a large university stated that the university would have been interested in performing this work and would have submitted a proposal if one had been solicited.

Two other contracts, MDA903-86-C-0207 and N00014-86-C-0036, were based on invalid unsolicited proposals for known agency requirements that could have been acquired competitively. The FAR, Subpart 15.5, requires that an unsolicited proposal must not be an advance proposal for a known agency requirement that can be acquired competitively. One contract was for operational planning, policy formulation, and coordination of DoD positioning/navigation systems for the Office of the Joint Chiefs of Staff. This requirement was identified in DoD Directive 4650.5, "Positioning and Navigation Systems Administration and Planning." The second contract involved a recurring requirement for conducting military operations research symposia. Similar services were procured from each contractor under previous contracts. The justification for each contract stated that the contractor was uniquely qualified to perform the work. For the first contract, we identified a contractor, with expertise in DoD positioning/navigation systems, who stated that his company would have submitted a proposal if the Government had competed the procurement. For the second contract, we identified a contractor who told us he was capable of organizing and conducting the military operations research symposia.

The FAR, Subpart 15.5, requires agencies to return an unsolicited proposal to the offeror when the proposal is not innovative and unique or when the substance of the proposal is available to the Government from another source. The 17 contracts identified during the audit did not meet these requirements and therefore should have been returned.

Market Searches. Program officials did not conduct effective market searches to ensure that only one source could

perform the work on the unsolicited proposals. For the 17 contracts, the ineffective methods used did not identify other potential sources. The searches were generally limited to placing sole-source notifications in the Commerce Business Daily or contacting Government personnel. Based on information available in the contract files and from interviews, we determined that on 13 of the 17 contracts other sources could have been solicited. The requirements described on the remaining four contracts indicated that other contractors could have performed the work; however, we did not attempt to identify other contractors because the contracts involved either classified information or intelligence-related functions.

An example of a contract where other sources were available involves a study of the Soviet Art of War for the 1990's, which was issued for the Office of the Assistant Secretary of Defense (International Security Policy). The market search was limited to a sole-source notice published in the Commerce Business Daily. According to the justification for the sole-source award, no other contractor could meet the Government's minimum needs. However, we identified two other potential contractors capable of performing the study based on information available in the contract files and interviews with contractors.

The FAR, Part 7, requires agencies to conduct market surveys for all acquisitions in order to promote, and provide for, full and open competition. Market surveys help determine whether other qualified sources are capable of satisfying the Government's requirement. The receipt of an unsolicited proposal does not constitute an adequate reason for conducting limited market searches. Agencies should seek proposals from other firms wherever possible to ensure that the best proposal is selected.

An effective market search should include, if possible, not only a preaward notice in the Commerce Business Daily, but also verbal or written contact with contractors who may be capable of performing the work. Sole-source notifications are not an effective form of market search because they indicate that the Government agency has made a firm decision to award a sole-source contract. Also, sole-source notifications do not encourage other contractors to submit proposals. Contracting officers placed sole-source notices in the Commerce Business Daily for 26 of the 66 sole-source contracts reviewed. Other contractors submitted statements of their capabilities in response to four of the notices, but these statements did not result in competitive procurements. One contractor requested a more detailed statement of work, but his request was rejected by a program official. The program official believed the sole-source synopsis was sufficiently worded for the contractor to submit a proposal.

In contrast, sources-sought synopses increase competition by inviting inquiries or requesting proposals from contractors.

Sources-sought synopses not only help avoid unnecessary sole-source awards, but they also provide evidence to support sole-source procurements adequately when the synopses do not identify other potential sources. For 14 of the 17 contracts that were based on invalid unsolicited proposals, sources-sought synopses could have been used to identify other potential contractors.

Also, on 34 of the remaining 40 contracts for which notices of proposed contractual actions were not published, officials believed the unique and innovative ideas contained in the unsolicited proposals would be disclosed. The remaining six contracts were for classified work. The FAR, Subpart 5.2, prohibits disclosure of innovative and unique ideas in unsolicited proposals, but does not preclude market searches that do not disclose such ideas. Market searches can often be conducted by disclosing the nature of the Government's requirement without disclosing the nature of an offeror's solution.

Of the 17 contracts that could have been competed, 6 contracts involved market searches where program officials only contacted other Government personnel. Although this form of market search can be easily performed, it is not adequate because it is dependent on the specific knowledge of Government personnel. Our identification of other potential contractors demonstrated that such market searches were not effective.

Contracting Officers' Review of Sole-Source Justifications. For the 17 contracts that could have been awarded competitively, contracting officers did not challenge either the validity of the unsolicited proposals or the sole-source justifications. The FAR, Part 6, provides that contracting officers are responsible for full and open competition in all procurements, unless the use of noncompetitive acquisition procedures is justified. The contracting officer must consider the reasons, normally provided by the requiring activity, for not using competition. The sole-source justification must demonstrate that an adequate market search was performed or that it was not practical to do so. The justification must provide a reasonable basis to conclude that only one contractor is capable of, and interested in, meeting the Government's requirements.

Contracting officers inappropriately relied on the inadequate sole-source justifications of program officials even though it was apparent that adequate market searches were not performed, and that other potential contractors existed who could do the proposed work. The following factors contributed to the contracting officers' reliance on program officials' justifications:

- the oversensitivity to the leverage of program officials,

- the perception that competitive awards require extra effort and more time, and

- the absence of sufficient technical knowledge and expertise to question sole-source justifications provided by program officials.

Contracting officers have an obligation to ensure: the integrity of the contracting process, that DoD pays a fair and reasonable price, and that DoD receives the best product for the price. Our identification of other potential contractors for 13 of the 17 contracts demonstrates that the responsible contracting officers could have done more to ensure that competition was achieved.

## RECOMMENDATIONS FOR CORRECTIVE ACTION

We recommend that the Under Secretary of Defense for Acquisition issue a memorandum to the DoD Components that:

1. Reemphasizes the requirement for DoD program officials to return unsolicited proposals to offerors when the proposals are not innovative and unique or in the case of services when the offerors do not have unique capabilities.

2. Provides additional guidance on market research by defining what constitutes an adequate market search. This additional guidance should point out that placing sole-source notifications in the Commerce Business Daily is not an effective form of market search and that market searches limited only to contacting other Government personnel are not sufficient. Also, the guidance should point out that market searches can often be conducted without disclosing proprietary information or unique ideas in unsolicited proposals.

3. Directs contracting officers to challenge procurements resulting from unsolicited proposals when there is doubt concerning the validity of the sole-source justifications or the adequacy of the market searches.

## MANAGEMENT COMMENTS

### Finding

The Director, Net Assessment (Office of the Under Secretary of Defense for Policy), nonconcurred with all findings and stated that the potential value of the report as an aid to management is diminished significantly by the fact that numerous findings are impressionistic and have no objective basis in the documentary record reviewed by investigators. The Director, Net Assessment, also stated: "Such findings would more properly be considered assertions, and appear to be the consequence of an investigatory

process that too frequently confuses means (e.g., competitive procurement) with ends (i.e., timely and efficient satisfaction of the government's requirements)." The Director, Net Assessment, challenged our audit criteria and stated that with respect to uniqueness, the finding represents a value judgment of a nonspecialist on research topics for which the Office of the Secretary of Defense staff has professional expertise and recognized academic competence at the postgraduate level. The Director, Net Assessment, also stated that because legal counsel has certified that contract assessments and justifications are documented to comply with the law, they comply fully with law and regulation. He stated that the findings represent a hunch at best and an operating bias at worst, and what we have in this instance are personal views of investigators masquerading as legal judgments.

Recommendations

The Assistant Secretary of Defense (Production and Logistics) stated that without comments or explanations from the purchasing offices, he was unable to evaluate the appropriateness of the recommendations. The Assistant Secretary stated that a March 31, 1988, revision of Defense Federal Acquisition Regulation Supplement 6.302-1(a)(70) was germane to most of the 17 cases in the report and that it would be beneficial to evaluate the effect of the recent changes before initiating new ones. Meanwhile, the Assistant Secretary has concurred with the recommendation to the extent of reemphasizing the existing and new regulations.

The Navy issued a memorandum emphasizing the management of unsolicited proposals. The guidance stated contracting officials should:

- return unsolicited proposals if they are not innovative.

- conduct thorough market research prior to making sole-source determinations on unsolicited proposals. "Sources-sought" synopses in the Commerce Business Daily are recommended.

- challenge sole-source determinations based on inadequate market research.

- conduct market searches without disclosing unique or innovative ideas in the unsolicited proposals.

The Assistant Secretary of the Navy (Shipbuilding and Logistics) concurred with the recommendations addressed to the Under Secretary of Defense for Acquisition. The Deputy Assistant Secretary of the Air Force (Acquisition Management and Policy) stated that while the findings and recommendations do not evolve from the Air Force proposals reviewed, the Air Force concurred

with the recommendations that call for a reemphasis on the innovative and unique requirements of unsolicited proposals and the need to provide guidance on making an adequate market search before accepting a sole-source justification.

## AUDIT RESPONSE TO MANAGEMENT COMMENTS

### Finding

We disagree with the Director, Net Assessment, comments both regarding the overall characterization of our report and specifically regarding the comments that the findings are impressionistic and have no basis in the records. Our conclusions were based on documentation in contract and program office files and on documented interviews with Government and contractor personnel. We believe this overall position presented by the Director, Net Assessment, indicates a lack of commitment by the Office of the Under Secretary of Defense for Policy to increase competition and to comply with the Competition in Contracting Act. We strongly believe that active management attention is needed in the Office of the Under Secretary of Defense for Policy to overcome the deep-seated impediments to competition. We also disagree with the comment that since legal counsel has concurred with contract assessments and justifications, the sole-sourcing complies fully with law and regulation. This comment is predicated on the assumption that sole-source justifications reviewed by legal counsel clearly presented all relevant information associated with the procurements. Our audit shows that such information, particularly the extent to which other potential contractors may have existed, was not always clearly presented in the justifications. Consequently, legal counsel concurrence was based on the information contained in the assessments and justifications, not necessarily on the information that should have been provided. Due to the length of the comments and the need to address the comments in detail, the audit response to the Director, Net Assessment, comments is provided at Appendix H.

### Recommendations

The Assistant Secretary of Defense (Production and Logistics) comments were not fully responsive to the finding and recommendations. We have reviewed the revision of Defense Federal Acquisition Regulation Supplement 6.302-1(a)(70) cited by the Assistant Secretary and believe that it will have a positive effect on procurement actions. However, we believe that the change will not have a significant impact on the conditions found in the audit and does not address the actions recommended in the report. The change does not address the issue of returning unsolicited proposals when they are not innovative or unique. The change also does not provide additional guidance on market research, define adequate market search, or discuss the use of

sole-source notifications. Additionally, the change does not address the issue of challenging procurements when there is doubt concerning the validity of the sole-source justifications or the adequacy of the market searches. We believe that the comments provided by the Navy and the Air Force on these recommendations further show the need to implement the recommendations. The Assistant Secretary's comments do not provide the specific action to be taken to reemphasize the existing and new regulations or when the actions are to be completed. We request that the Under Secretary of Defense for Acquisition reconsider the response on these recommendations and provide the final position to us.

B. Contract Administration

FINDING

Contract administration on five Defense Supply Service - Washington (DSS-W) contracts was not adequate to ensure that contractors complied with contract requirements and that payments to contractors were appropriate. This condition occurred because contracting officer representatives (CORs) permitted contractors to deviate from contractual requirements and did not notify contracting officers of changes and problems with contractor performance. Procuring contracting officers at DSS-W contributed to the condition by not requiring periodic feedback from CORs concerning contractor performance and payments to contractors. Also, contractors were not required to provide periodic progress and financial status reports. As a result, constructive changes to contracts occurred, and procuring contracting officers have been placed in a position of possibly ratifying unauthorized commitments and negotiating retroactive price adjustments. Three contractors were paid about $52,000 although they had not fulfilled all their contract requirements. In addition, required items either were not delivered or were being delivered late, which diminished their value.

DISCUSSION OF DETAILS

Background. Federal Acquisition Regulation (FAR) 43.102 states that only contracting officers acting within the scope of their authority are empowered to execute modifications on the Government's behalf. It specifically states that other Government personnel shall not execute modifications, act in such a manner as to cause the contractor to believe that they have authority to bind the Government, or direct or encourage the contractor to perform work that should be the subject of a contract modification. FAR 43.102 also states that contract modifications shall be priced before their execution if this can be done without adversely affecting the Government's interest. FAR 1.602-3 covers contracting officer ratification of unauthorized commitments. An unauthorized commitment is an unbinding agreement solely because the Government representative who made it lacked authority to enter into that agreement.

Army Supplement 42.9001 to the FAR authorizes DSS-W contracting officers to select and designate CORs. The authority of the CORs is strictly limited to the specific duties set forth in their appointment letters. In general, CORs are authorized to take action necessary to ensure the contractor performs the technical requirements of the contract and to immediately advise the contracting officer, in writing, when a contractor's performance is not satisfactory.

COR Performance. CORs for five DSS-W contracts did not perform adequate contract administration to ensure compliance with contract requirements and appropriateness of payments. CORs for four contracts, without the knowledge of contracting officers, allowed changes in the scope of work, altered delivery schedules, or did not insist that contractors furnish required items. The COR for the fifth contract did not monitor contractor performance and did not insist that the contractor furnish required items. Details on the five contracts are discussed in the following paragraphs.

- On contract MDA903-86-C-0154, an official (who subsequently became the COR) instructed the contractor to perform a study that differed significantly from the statement of work contained in the contract. The contractor proposed a study of Soviet military doctrine, capabilities, and threat assessments, focusing on 1984 Soviet/Warsaw Pact exercises. Before the contract was awarded, the COR, with the approval of the Under Secretary of Defense for Policy, authorized the contractor to perform a study of the impact of the Soviet involvement in Afghanistan on the Soviet Armed Forces. Neither the COR nor the contractor advised the contracting officer that a different study would be performed. A firm-fixed-price contract was awarded on the basis of the contractor's original proposal rather than on the revised statement of work, which may have warranted a change in contract price.

- On contract MDA903-86-C-0062, the COR allowed the contractor to delay delivery of its final report, to deliver a product that did not meet requirements, and to use an unauthorized consultant. This contract required delivery of a final report on November 19, 1986, but the report was not delivered until February 2, 1988, 14 months late. The contractor billed costs totaling $127,299 and fees totaling $11,977, and by February 1987 was paid all costs but $1,797 in hold-back fees. According to the alternate COR, the contractor was requested to make significant changes in the draft report because it contained language that would not facilitate a bipartisan discussion of U.S. policy in Central America. However, documentation of the requested changes or any documentation of discussions to indicate the nature and extent of the changes was apparently not maintained. Only a few minor changes were actually made, and they did not change the tone or content of the final report. We were unable to determine why the final report was not delivered sooner, or of what value the report will be in formulating U.S. policy in Central America. The contract authorized the use of one consultant and required the contractor to obtain approval from the administrative contracting officer at the Defense Contract Administration Services Management Area, Albuquerque, New Mexico, to use any additional consultants. We determined that the contractor did not obtain authorization to use an additional consultant. On March 9, 1987, a payment made to the

contractor included $5,265 for a second consultant. In June 1987, about 7 months after the final report was due, the COR wrote the alternate COR inquiring about the status of the final report and the use of the unauthorized consultant. According to the COR, there was no record of the alternate COR's response. Neither the COR nor the alternate COR notified the procuring contracting officer of these circumstances.

- On contract MDA903-86-C-0032, the COR unilaterally waived requirements for interim technical and draft reports without notifying the contracting officer, and permitted the contractor to deliver the final report a year late. The report was due in November 1986, but was not delivered until November 1987. The contract payment schedule called for $10,000 for an interim technical report, $10,000 for a draft report, and $21,000 for the final report. On August 21, 1987, 9 months after the final report was due, the COR wrote to the contractor requesting a status report and advised that contract termination would be requested unless some explanation and evidence of substantial progress was provided. We were unable to locate any documentation showing that the contractor responded to the COR's letter. The COR did not notify the contracting officer of this delinquency problem.

- On contract MDA903-86-C-0167, the COR waived the requirement for the contractor to submit monthly progress reports. This action was taken without notifying the contracting officer. The contractor subsequently received an 8-month extension from the contracting officer because of difficulties it was having in completing the work.

- On contract MDA903-86-C-0158, the COR assumed the contractor had ceased work in December 1986 because of technical problems. The COR did not notify the procuring contracting officer of the technical problems and potential work stoppage. This contract, with a cost ceiling of $49,729, called for a progress letter report, task/milestone reports, and a final report to be submitted in July 1987. The contractor submitted a progress letter report in October 1986, but as of January 1988 had not submitted the task/milestone reports or the final report. Payment vouchers showed that the contractor was paid $27,000 for work performed after December 1986. Neither the COR nor the contracting officer was aware of the payments or knew whether the $27,000 in payments was for work actually performed. Had the COR notified the contracting officer in December 1986 of the contractor's technical difficulties, a decision could have been made on whether to terminate the contract and potentially save the $27,000. According to the COR, the contractor did not intend to submit the final report until we inquired about the matter. The extent of the technical difficulties experienced by the contractor and the late delivery makes the value of the final product uncertain.

Contracting Officer Oversight. Procuring contracting officers at DSS-W did not establish adequate controls to ensure that the contractors' performance and payments to contractors were in accordance with contract terms. Contracting officers did not follow up with CORs to determine why deliverable items were overdue, and did not require CORs to provide periodic progress and financial status reports regarding contractor performance. Additionally, two contracts did not contain requirements for the contractor to report performance and funding status periodically, and a third contract contained reporting requirements that were not adequate.

On three of the five contracts, final products were delinquent for periods of 6, 12, and 14 months. However, the DSS-W contracting officers did not follow up with the CORs to determine why the final products were overdue and what remedies might have been available to expedite delivery and safeguard the Government. Additionally, the COR appointment letters did not require the CORs to provide the contracting officers with periodic information on contractor performance and funding status. Such information is crucial for contracting officers to fulfill their responsibilities, particularly in the event a problem develops on the contract.

Contract MDA903-86-C-0062 (a cost-plus-fixed-fee contract) did not contain a requirement for contractor progress reporting. The final product on this contract was 14 months late, and costs up to the contract ceiling ($127,299) had been billed 12 months before the final product was delivered. Contract MDA903-86-C-0032, a firm-fixed-price contract, also did not contain a requirement for the contractor to report progress periodically. Delivery of the final product on this contract was 12 months late. Contract MDA903-86-C-0167, a cost-plus-fixed-fee contract, had inadequate reporting requirements because the contractor was not required to report periodically progress and problems associated with the execution of the work. For such reports to be meaningful, they should contain items such as milestones and problems encountered or anticipated. For cost contracts, the reports should also reflect the current fiscal status of the contract and provide an accounting of the level of effort and funds expended and remaining on the contract.

RECOMMENDATIONS FOR CORRECTIVE ACTION

1. We recommend that the Under Secretary of Defense for Policy advise personnel within offices under his cognizance who serve as contracting officer representatives to comply with the requirements in their appointment letters and not direct or allow contractors to take action outside the scope of the contracts and refer possible problems or proposed changes to the contracting officer.

2. We recommend that the Assistant Secretary of the Navy (Shipbuilding and Logistics) request the contracting officer representative on contract MDA903-86-C-0158 to comply with the requirements specified in his appointment letter including those related to contractor performance and delivery of required products.

3. We recommend that the Director, Defense Supply Service - Washington, require:

a. Contracting officers to reemphasize in a memorandum to their contracting officer representatives the importance of complying with the appointment letters, particularly regarding reporting contractor performance and delivery of required products.

b. Contracting officers to follow up with contracting officer representatives when progress reports or deliverable items on contracts are not provided in a timely manner.

c. Contracting officers to incorporate adequate contractor reporting requirements in contracts. These reporting requirements should, as a minimum, provide information on such items as milestones met or missed; items delivered; problems anticipated or encountered; and, when appropriate, current financial status to include costs billed, and funds expended and remaining on contracts.

d. Contracting officers to add a requirement to the appointment letter requiring contracting officer representatives to provide a written contract status report to the contracting officer at least quarterly.

e. The contracting officer for contract MDA903-86-C-0032 to review contract performance to determine if a downward price adjustment is warranted since the contractor did not deliver two of the three reports specified in the contract.

f. The contracting officer for contract MDA903-86-C-0062 to review contract performance for consideration of a reduction in fee for delinquent delivery and disallowance of costs for a consultant not authorized on the contract.

g. The contracting officer for contract MDA903-86-C-0158 to determine if payments on the contract were commensurate with the work performed and disallow all inappropriate billings.

## MANAGEMENT COMMENTS

### Finding

The Director, Net Assessment (Office of the Under Secretary of Defense for Policy), nonconcurred with this finding. The Director stated that the audit report was deficient regarding judgments on the propriety of contract pricing and the value of goods or services received. The Director stated that the $52,000 in "potential savings" represented an infinitesimal fraction of the value of the contracts reviewed. Also, the assertion that late delivery of certain items (chiefly analytical reports) had "diminished their value" was wholly undocumented by the investigative record and was also demonstrably incorrect. He also stated that the value of reports that are "late" by formal or informal consent, in order to take advantage of additional, unanticipated research, are actually increased because the ultimate products are more comprehensive or thorough. He also stated that the question of "diminished value" normally is moot because the Government's analytical requirements have been satisfied by the delivery of a draft report. Officials do not wait for a final report to exploit the recommendations in the draft report. In the area of Under Secretary of Defense for Policy studies, the criticism that certain contract products were not delivered was based on a superficial understanding of the purposes of various incremental deliverables and failure to distinguish between needed substantive deliverables and reporting intended to justify progress payments.

### Recommendations

The Director, Net Assessment, concurred with Recommendation B.1. and stated that staff personnel would again be reminded to comply with requirements pertaining to serving as CORs. The Director stated that published staff guidelines already do so, as do the procurement staff's memorandums of instruction to CORs.

The Assistant Secretary of the Navy (Shipbuilding and Logistics) concurred with Recommendation B.2. and issued a memorandum to the Commander, Space and Naval Warfare Systems Command, to implement the recommendation. The Navy also issued another memorandum to Navy activities on May 5, 1988, stating that contracting officials should advise CORs to comply with their appointment letters, avoid directing actions outside the scope of the contract, and ensure that COR appointment letters contain adequate contracting officer notification guidance.

The Administrative Assistant to the Secretary of the Army concurred with Recommendation 3.a. and stated that the necessity to emphasize the importance of complying with the appointment letters will continue to be stressed. The Army said that since the award of the contracts studied, DSS-W had published a COR

handbook and was in the process of developing a COR training course. Additionally, the DSS-W acquisition staff had been sensitized to the problem and encouraged to discuss COR roles, responsibilities, etc., with the CORs before the award of contracts. The Army believes these efforts to be equally effective as mailing individual memorandums.

The Army concurred with Recommendation B.3.b. and stated that virtually all the contracts of the type examined by the OIG were administered by administrative contracting officers (ACOs) from the Defense Contract Administration Service Management Areas (DCASMAs) or, in the case of contracts with universities, ACOs with the Office of Naval Research. The Army stated that a higher level of surveillance by the ACOs would mitigate this problem.

The Army concurred with Recommendation B.3.c. and stated that meaningful reporting requirements were the rule for contracts written by DSS-W and that acquisition staff were encouraged to elicit appropriate reporting requirements from the customer agency if they are not specified in the requisition package or were deemed insufficient. The Army stated that the problem was not with the absence of contract report requirements but with the failure of the CORs to act promptly on the reports when received. The Army stated that CORs should be held to the level of performance specified in their letters of instruction.

The Army nonconcurred with Recommendation B.3.d. and stated that current instructions require the COR to ". . . insure that the Contractor is in compliance with all technical aspects of the contract . . ." and to submit required reports in a timely manner. The Army stated that another official reporting requirement, particularly considering current staff constraints, would serve no useful purpose. The Army further stated that increased customer agency oversight of COR performance is required to discipline the system rather than additional paperwork requirements.

Regarding Recommendation B.3.e., the Army stated that the contracting officer reviewed contract MDA903-86-C-0032 and concluded that a downward price adjustment was unwarranted. The Army stated that the contractor did not deliver the two interim reports, but the Government was not disadvantaged. The review of that contractor's technical proposal revealed that only a final report was to be delivered and that was the only report ever required by the customer. The two interim reports were to have been merely progressive drafts or "in progress" versions of the final report. These interim reports were included in the contract to facilitate partial payment under this fixed-price contract. The contractor, in fact, chose not to bill until the final report was accepted; thus, the Government suffered no harm.

Regarding Recommendation B.3.f., the Army stated that the contracting officer reviewed contract MDA903-86-C-0062 and did not concur with a reduction in contract amount for late delivery. The contracting officer concluded that the final report was prepared on time. However, the contractor was instructed by the alternate COR to defer release of the report, presumably pending further developments in the area of study that could be incorporated into the final report to make it more meaningful and current. Unfortunately, the final report, as delivered late, was not materially different from the text that was prepared on time. Because the late delivery was caused by the Government and notwithstanding the lack of communication between the contractor, the contracting officer, and the COR relative to the delivery, the contractor should not be penalized. The contracting officer did concur that the Government should disallow the unapproved subcontract (consultant) costs. The Army stated that the DCASMA would issue the contracting officer's "Final Decision" on this issue.

On Recommendation B.3.g., the Army stated that the contracting officer reviewed contract MDA903-86-C-0158 and determined that the contract was a cost-reimbursement, research/study contract in which the contractor was required to provide best efforts to accomplish the statement of work. The Army stated that the COR had informed the contracting officer that the contractor submitted two papers and conducted a briefing at the Navy with DoD representatives present. The Government derived benefit from these items, and a final report summarizing results has been delivered and accepted. Accordingly, the Army was satisfied that value has been received commensurate with the costs incurred. The Army also stated that specific elements of cost will be reviewed during final audit to ensure that the elements were properly allowable and allocable.

## AUDIT RESPONSE TO MANAGEMENT COMMENTS

### Finding

The comments by the Director, Net Assessment, are not responsive. The solicitation and award of a Government contract produces only a set of papers. It is the performance of the obligations set forth in those papers that is the ultimate reason for contracting. Following contract award, the major objective is to complete successfully the scope of work in a timely and fully responsive manner. Inattention to the performance and administration phase of the contracting process results in untimely and unacceptable performance, as well as program disruptions, increased administrative costs, and disputes. The finding addresses a lack of attention on the part of program staff who have been made CORs and on poor communications between them and the contracting officer who appointed them. Contract fulfillment, the major goal, was impaired.

The doctrine of substantial performance, which the Director, Net Assessment, references, is based on court decisions and boards of contract appeals decisions that accept less than strict compliance with contract requirements where the contractor has substantially performed the contract. This doctrine can only be applied if the project is capable of serving its intended purpose without absolute completion. The application of the substantial performance rule has been generally limited to construction contracts and, in some instances, supply contracts. For a supply contract to be deemed substantially performed, the contractor must have delivered goods within the project schedule that substantially conform to contract requirements, the defects in the goods must be minor and correctable within a reasonable time, and the contractor must have reasonable grounds to believe that the delivery would conform to the specifications. The Armed Services Board of Contract Appeals has held that the doctrine will not be applied where the contractor fails to make delivery in accordance with a contract schedule. We believe that the finding is still valid and that the Office of the Under Secretary of Defense for Policy should reevaluate its position in the reply to the final report.

Recommendations

The action planned by the Director, Net Assessment, is not fully responsive to Recommendation B.1. The audit showed that CORs were not always complying with the published staff guidance and the memorandum of instruction to CORs. The Director, Net Assessment, did not specifically address the issues in the recommendation. The comments do not state how the action is to be accomplished and when it will be completed. Therefore, we request that the Office of the Under Secretary of Defense for Policy reconsider this position and provide comments that are responsive.

The Navy comments and actions on Recommendation B.2. are considered fully responsive.

The action the Army planned is not fully responsive to Recommendation B.3.a. In July 1987, when the DSS-W handbook for CORs was distributed, the five contracts discussed in the report were still ongoing, and the CORs were still responsible for monitoring the contractors performance. We believe that the handbook is a positive action and provides needed guidance to CORs. However, the Army needs to inform us what actions are going to be taken to emphasize the importance of complying with the appointment letter and how the acquisition staff has been sensitized to the problems. The Army also needs to provide the dates the training course and other actions will be completed. We request that the Army review its position on this recommendation and provide estimated completion dates in the reply to the final report.

The Army's comment on Recommendation B.3.b. that a higher level of surveillance by the ACOs would mitigate the problem is not responsive. On the five contracts discussed in the finding, the contracting officers had designated CORs to ensure that the contractors performed the requirements of the contracts. The assignment of these responsibilities to the COR does not relieve the contracting officer of the ultimate responsibility for ensuring performance of all necessary actions for effective contracting and for ensuring compliance with the terms of the contract. It is unclear how a higher level of surveillance by the ACOs would mitigate the reported problems. For us to evaluate this action, the Army should provide the details as to what action will be taken to provide the higher level of surveillance and when those actions are to be accomplished. We believe that it is the responsibility of the contracting officer to ensure that the COR is performing in accordance with the appointment letter and to follow up with CORs when items are not provided in a timely manner. We request that the Army reconsider its position on this recommendation and provide comments that are responsive to the recommendation.

The Army concurred with Recommendation B.3.c., but the comments are not consistent with the concurrence. The Army stated that the problem is not with the absence of contract report requirements but with the failure of the COR to act promptly on the reports when received. The Army further stated that meaningful reporting requirements are the rule for contracts written by DSS-W. As discussed in the finding, three of the five contracts did not have a requirement for contractor progress reporting or contained inadequate reporting requirements. As a result of the Army comments, we expanded this review to the 11 DSS-W contracts identified in Appendix C and found that 2 did not have a requirement to report performance and funding periodically, and 5 contained reporting requirements that were not adequate. We request that the Army reconsider its position on this recommendation and provide comments that are responsive to the recommendation.

Regarding the Army comments on Recommendation B.3.d., we agree that current instructions require the COR to ensure that contractors are in compliance with the contracts and require the COR to submit reports in a timely manner. The additional reporting requirement is needed because the CORs were not complying with all requirements. A required periodic report will serve several purposes. First, it would make the CORs determine the status of their contracts in order to provide the report to the contracting officer. Second, contracting officers would have additional assurance that the CORs are monitoring the contracts. Furthermore, potential problems could be identified to the contracting officers at an earlier stage. A required periodic report would be a vehicle for contracting officers to

follow up with CORs when reports and products are overdue. We agree that increased customer agency oversight of COR performance is desired. However, the responsibility for ensuring the contractors' performance ultimately lies with the contracting officer. We request that the Army reconsider its nonconcurrence with this recommendation and provide comments to the final report.

On Recommendation B.3.e., we do not agree with the contracting officer that the contract payment was proper and in the best interest of the Government. The purpose of the interim and draft technical reports were not to justify only partial payment to the contractor. They were also included to serve as a means of monitoring the contractor's performance and ensuring that the contractor was performing in a timely manner. Adequate monitoring of the interim reports could have had some positive influence on getting the final report on time, rather than a year late. This inclusion of interim reports only as a means for partial payments also contradicts the Army's response to Recommendation B.3.c., which states that meaningful reporting requirements are the rule for contracts written by DSS-W. We request that the contracting officer reevaluate his conclusion that a price adjustment is not warranted. The Armed Services Board of Contract Appeals has determined that where substantial performance has occurred, the Government's damages for a failure to comply strictly with the specifications will be limited to the reasonable value for the unperformed work. Certainly, some effort would have been required by the contractor to prepare the reports that were not delivered on this firm-fixed-price contract.

The Army comments on Recommendation B.3.f. indicate a reluctance by the contracting officer to seek a price reduction for the contractor's delinquency and noncompliance with contract terms. We request that the contracting officer reconsider the position on this contract and provide an estimated completion date for the contracting officer's final decision.

The Army comments on Recommendation B.3.g. are partially responsive. As previously discussed, the contractor did not intend to submit the final report until we inquired about the matter. We began our inquiries on the status of the report on February 1, 1988, and the final report was delivered on February 23, 1988. The comments did not state whether the final audit had been requested or when it would be performed. We request that the Army provide this information in its reply to the final report.

## DEFINITION OF ACRONYMS

| | |
|---|---|
| OJCS | Office of the Joint Chiefs of Staff |
| AVSCOM | U.S. Army Aviation Systems Command |
| MICOM | U.S. Army Missile Command |
| CNO | Chief of Naval Operations |
| SPAWAR | U.S. Navy Space and Naval Warfare Systems Command |
| ONR | Office of Naval Research |
| AD | U.S. Air Force Armament Division |
| DARPA | Defense Advanced Research Projects Agency |
| DSS-W | Defense Supply Service - Washington |

These acronyms are used in Appendixes B, C, and H.

SUMMARY SCHEDULE OF CONTRACTS REVIEWED

| Procurement Office | Number of Contracts Reviewed | Dollar Value (millions) | Number of Invalid Proposals | Dollar Value (millions) |
|---|---|---|---|---|
| DSS-W | 18 | $20.0 | 11 | $4.3 |
| ONR | 13 | 5.6 | 3 | .5 |
| AD | 16 | 2.1 | 0 | |
| MICOM | 8 | 6.6 | 1 | .2 |
| SPAWAR | 10 | 5.8 | 2 | .2 |
| AVSCOM | 1 | .5 | 0 | |
| TOTAL | 66 | $40.6 | 17 | $5.2 |

## SCHEDULE OF CONTRACTS BASED ON INVALID UNSOLICITED PROPOSALS

| Procurement Office | Contract Number | Contract Amount | Requiring Activity | Adequate Market Search | Other Potential Source Identified |
|---|---|---|---|---|---|
| DSS-W | 86-C-0037 | $2,255,451 | OSD-Net Assessment | No | No |
| | 86-C-0063 | 954,491 | OSD-Net Assessment | No | No |
| | 86-C-0167 | 417,744 | OSD-Policy | No | Yes |
| | 86-C-0207 | 150,090 | OJCS | No | Yes |
| | 86-C-0062 | 139,276 | OSD-International Security Affairs | No | Yes |
| | 86-C-0044 | 85,708 | OSD-International Security Affairs | No | Yes |
| | 86-C-0288 | 77,186 | OSD-Policy | No | No |
| | 86-C-0154 | 70,116 | OSD-International Security Policy | No | Yes |
| | 86-C-0078 | 50,000 | OSD-Net Assessment | No | Yes |
| | 86-C-0032 | 41,000 | OSD-Policy | No | Yes |
| | 86-C-0072 | 39,002 | OSD-Net Assessment | No | Yes |
| ONR | 86-C-0036 | 275,530 | CNO | No | Yes |
| | 86-C-0091 | 114,923 | CNO | No | Yes |
| | 86-C-0226 | 98,816 | CNO | No | Yes |
| MICOM | 86-C-0175 | 208,600 | DARPA | No | No |
| SPAWAR | 86-C-0110 | 198,346 | SPAWAR | No | Yes |
| | 86-C-0429 | 35,000 | SPAWAR | No | Yes |
| TOTAL | | $5,211,279 | | | |

## SYNOPSIS OF CONTRACTS BASED ON INVALID UNSOLICITED PROPOSALS

I. Defense Supply Service - Washington

A. Contract Number: MDA903-86-C-0037

Contractor: Booz, Allen and Hamilton

Contract Amount: $2,255,451

Requiring Activity: OSD - Director, Net Assessment

Proposal Description: The proposal was for application of a specific wargaming methodology to evaluate a series of strategic defense issues.

Assessment/Conclusion: The unsolicited proposal was a continuation of a wargaming project that had been ongoing since 1981. The contractor's proposal recommended tasks to be accomplished during the contractual period. The sole-source justification stated that no other source was capable of conducting the effort because the strategic analysis simulation model and methodology were proprietary to the contractor. It also stated that the classified nature of the proposal made solicitation impractical. The market search consisted of contacting other DoD experts. The principal contractor official responsible for performing the work had previously served as Chief of the Studies Analysis and Gaming Agency within the Office of the Joint Chiefs of Staff, and as the Executive Assistant and Naval Aide to the Secretary of the Navy.

Although the contractor's staff had DoD experience, we believe that the requirement for this wargaming support should have been competed. It was a continuation of a prior effort; therefore, a known agency requirement. Furthermore, the contracting office placed a sources-sought synopsis in the Commerce Business Daily for a related effort that involved the same wargaming methodology and obtained four proposals, including one from Booz, Allen and Hamilton.

B. Contract Number: MDA903-86-C-0063

Contractor: Boeing Aerospace Company

Contract Amount: $954,491

Requiring Activity: OSD - Director, Net Assessment

Proposal Description: This proposal was to do an analysis entitled "Enhanced Deterrence of Conventional War Study."

Assessment/Conclusion: The justification for this sole-source contract was the unique and innovative research methodology, and that the contractor was the only responsible source. The market search consisted only of contacts with DoD experts. Other consultant firms were not contacted because the proposal contained classified information. The contractor's principal analyst was a retired Navy Rear Admiral, whose last active duty assignment involved implementing the basic structure and allocation of U.S. nuclear forces.

Notwithstanding the qualifications of the contractor's principal analyst, we believe that the requirement could have been competed. It was a follow-on effort to previous research that had been sponsored by the Defense Nuclear Agency. Tasks, which were considered innovative and unique, included developing scenarios based on previous studies, proposing National objectives and associated targeting objectives, and preparing a study report. Based on the nature of the requirement, we believe other firms were capable of performing studies on this subject.

C. Contract Number: MDA903-86-C-0167

Contractor: BDM Corporation

Contract Amount: $417,744

Requiring Activity: OSD - Under Secretary of Defense for Policy

Proposal Description: This proposal was for a study project on current changes and developments in military technology. The study would be based on a series of six seminars in Europe. DoD would provide input on Soviet views of changing technology and request European and American experts to provide input on the security and economic impact of these emerging technologies.

Assessment/Conclusion: According to the sole-source justification, the contractor was uniquely qualified to perform this study. The market search was limited to placement of a sole-source notification in the Commerce Business Daily with no effort to contact other possible sources. This limited effort was not sufficient to rule out the possibility that other potential sources existed that could perform the study. We identified another source who stated that it was capable of performing the work and would have submitted a bid had the acquisition been competed.

D. Contract Number: MDA903-86-C-0207

Contractor: Decisions and Designs, Inc.

Contract Amount: $150,090

Requiring Activity: Office of the Joint Chiefs of Staff

Proposal Description: This proposal was to provide support for operational planning, policy formulation, and coordination of DoD positioning/navigation systems. The contractor was also responsible for providing a draft of the Joint Chiefs of Staff Master Navigation Plan. Similar services had been procured from the contractor under a previous contract.

Assessment/Conclusion: This contract resulted from a proposal for a known agency requirement that could have been competed. DoD Directive 4650.5, "Positioning and Navigation Systems Administration and Planning," specifies that the Chairman, Joint Chiefs of Staff, is the focal point for positioning/navigation operational matters, and that the Joint Chiefs of Staff Master Navigation Plan will be reviewed annually and revised as required. The contractor's staff included several retired DoD military and civilian personnel.

The market search was limited to a sole-source notification placed in the Commerce Business Daily. Another contractor requested additional details on the Government's requirement, but the information was not provided by the contracting officer upon advice of the program office. We identified a contractor that had the expertise and security clearance needed to perform the work and that also had contracts related to the requirement.

E. Contract Number: MDA903-86-C-0062

Contractor: Sumner Associates

Contract Amount: $139,276

Requiring Activity: OSD - Assistant Secretary of Defense (International Security Affairs)

Proposal Description: The proposal was for an assessment of low-intensity conflict in Central America. The purpose of the study was to supplement and provide alternative approaches to DoD's internal assessment of the problem, and to provide potential solutions.

Assessment/Conclusion: The sole-source justification for this contract was that the contractor was the only responsible source because of its unique qualifications. These

qualifications were the skills of the company's principal investigators, a retired Army Lieutenant General, a retired Air Force Colonel, and a former Honduran Army General. Each had experience with low-intensity conflicts.

Although the contractor's staff had extensive military experience, the proposal did not contain sufficient information to demonstrate that the nature, concept, or study approach was unique and innovative, or that the staff qualifications were unique. The sole-source justification stated that a limited market search was performed but did not provide any information on who was contacted. A responsible official of a contractor in the Washington, D.C., area stated that its company could have performed the study and would have submitted a proposal had the procurement been competed. We believe the requirement should have been competed.

F. Contract Number: MDA903-86-C-0044

Contractor: Pacific Forum

Contract Amount: $85,708

Requiring Activity: OSD - Assistant Secretary of Defense (International Security Affairs)

Proposal Description: This proposal was to conduct a study of the U.S. security interests in the South Pacific. The effort was based on a set of papers presented by Australian, New Zealander, and American academic and defense specialists at a conference in Melbourne, Australia.

Assessment/Conclusion: The sole-source justification for the contract was the contractor's unique qualifications. The effort was a follow-on acquisition to a May 1984 workshop and project on "Current Attitudes and Reactions to Soviet Policies in the Asia-Pacific Region." A sole-source synopsis was placed in the Commerce Business Daily on the procurement. The sole-source contract was requested by the Assistant Secretary of Defense (International Security Affairs). The company's founder and President is a retired Navy Rear Admiral, whose active duty assignments included principal strategic officer for the U.S. Pacific Command and Secretary of the Joint Chiefs of Staff.

Despite the experience of the contractor's staff, there was strong evidence that the requirement could have been competed. Specifically, a memorandum prepared by an official within the Office of the Under Secretary of Defense for Policy stated:

> Nothing about the proposal strikes me as either unique or innovative (which the Competition in

Contracting Act requires us to demonstrate if you wish to sole source this to Pacific Forum) nor am I aware of any qualifications possessed by Pacific Forum which would make that organization any more qualified than any of a number of other contractors.

Furthermore, effort under the contract was similar to a project titled "Strategic Imperatives in the Southwest Pacific" that the Office of the Under Secretary of Defense for Policy had considered processing competitively. An official at a large university with a notable political science department stated that the university would have been interested in performing the project, and would have submitted a proposal if it had been given the opportunity.

G. Contract Number: MDA903-86-C-0288

Contractor: C&L Associates, Inc.

Contract Amount: $77,186

Requiring Activity: OSD - Under Secretary of Defense for Policy

Proposal Description: The proposal was for a study on Canadian contributions to North American Defense and the NATO Alliance.

Assessment/Conclusion: The justification for awarding the contract on a sole-source basis was the contractor's unique qualifications. The contractor was familiar with a Canadian effort to study Canadian defense policy. The market survey was limited to informal contracts with other Government officials. The program office developed a technical proposal in case the contracting officer determined the procurement should be competed.

We believe the contract should have been competed because the nature and scope of the proposed study was not innovative or unique. Based on the nature of the study, we believe other firms were capable of performing similar analyses. However, we did not discuss the specific requirement of this procurement with other companies because it was classified.

H. Contract Number: MDA903-86-C-0154

Contractor: Yossef Bodansky

Contract Amount: $70,116

Requiring Activity: OSD - Assistant Secretary of Defense (International Security Policy)

Proposal Description: The original proposal was for a study of Soviet military doctrine, capabilities, and threat assessments, focusing on 1984 Soviet/Warsaw Pact exercises. Subsequent to the sole-source justification being provided to the contracting office, but before the contract was awarded, the contracting officer representative authorized the contractor to perform a study of the impact of the Soviet involvement in Afghanistan on the Soviet Armed Forces. However, neither the contracting officer representative nor the contractor advised the contracting officer that a different study would be performed. The contract was awarded for the original proposal.

Assessment/Conclusion: The contract should have been competed. The proposal was not innovative or unique because it was a continuation of a previous study on Soviet military capabilities. No market search was performed. A sole-source notice was published in the Commerce Business Daily that resulted in an anonymous letter to the contracting officer, which alleged other consultants were capable of performing the task and challenged the basis for awarding a sole-source contract. However, the Assistant Secretary of Defense (International Security Policy) insisted that a contract be awarded sole-source to Mr. Bodansky. The contracting officer awarded the sole-source contract. We made inquiries and confirmed that other consulting firms and individual consultants were capable of performing the study.

I. Contract Number: MDA903-86-C-0078

Contractor: Rekenthaler Technology Associates Corporation

Contract Amount: $50,000

Requiring Activity: OSD - Director, Net Assessment

Proposal Description: This proposal was for a study of Soviet Warfare in Northern Europe.

Assessment/Conclusion: The justification for the sole-source contract was that the contractor had unique qualifications and was the only responsible source. The procurement required a contractor with extensive experience in studying Soviet campaign planning and a knowledge of existing source material to study Soviet warplanning over the last 25 to 30 years. The contractor's principal analyst for the study was a former staff member of the Center for Naval Analysis. A market search was limited to contacting DoD experts and placing a sole-source synopsis in the Commerce Business Daily.

The contract could have been competed because the contracting officer representative identified four other contractors with capabilities to do the study. We confirmed that two of these contractors had the capabilities and may have bid on the study had it been competed.

J. Contract Number: MDA903-86-C-0032

Contractor: C&L Associates, Inc.

Contract Amount: $41,000

Requiring Activity: OSD - Under Secretary of Defense for Policy

Proposal Description: This proposal was for a study of European military balance assessments. The purpose of the study was to evaluate the extent of political bias produced by non-governmental study centers in the assessment of capabilities of North Atlantic Treaty Organization - Warsaw Treaty Organization Forces.

Assessment/Conclusion: The justification for the sole-source contract was the contractor had unique qualifications. These qualifications were substantial foreign language skills not normally found among defense analysts and prior research conducted for OSD Net Assessment on the subject. The market search was limited to a sole-source notification in the Commerce Business Daily.

The procurement could have been competed because we identified another contractor that was familiar with the sources of information used on the project and would have submitted a bid.

K. Contract Number: MDA903-86-C-0072

Contractor: National Institute for Public Policy

Contract Amount: $39,002

Requiring Activity: OSD - Director, Net Assessment

Proposal Description: This proposal was for a study of extending strategic deterrence in light of the changing strategic balance and the relatively unchanging political framework of Western mutual security commitments.

Assessment/Conclusion: The justification for the sole-source contract was the contractor had unique qualifications and was the only responsible source. The principal researcher was considered an expert on many military-political subjects vital to

U.S. defense planning and was directly involved with the debate over Alliance evolution and policy for future U.S.-NATO relations. The market search was limited to contacts with DoD experts and policy officials. A sole-source synopsis was published in the Commerce Business Daily.

The procurement should have been competed. The subject of the study and the methodology for conducting it were not innovative and unique. The procurement could have been competed because we identified another contractor who stated it probably would have bid on the procurement.

II. Office of Naval Research

A. Contract Number: N00014-86-C-0036

Contractor: Military Operations Research Society, Inc.

Contract Amount: $275,530

Requiring Activity: Chief of Naval Operations (OP-916)

Proposal Description: The proposal was to conduct the 54th, 55th, and 56th Military Operations Research Symposiums. The contractor makes up the agenda, notifies the attendees, and summarizes, prints, and distributes papers presented at each symposium and prepares a summary report on each symposium.

Assessment/Conclusion: This contract was based on an advance proposal for a known requirement since both the contractor and the Government were aware of the need for a future symposium. The sole-source justification for the contract stated that the contractor was the only responsible source and that no other type of service would satisfy agency requirements. A market search was not conducted because it was not considered cost-effective. A sole-source notification was placed in the Commerce Business Daily. The contractor is a nonprofit professional society with an interest in military operations research, who proposed to perform the work at cost. The president of the Society was a retired Navy Captain.

The proposal should have been returned to the offeror and the requirement competed. We found that no efforts had been taken to enhance competition for future procurements. We located another contractor who stated that it had the capability to conduct the symposiums and believed that other firms were also capable of performing this work.

B. Contract Number: N00014-86-C-0091

Contractor: National Security Research

Contract Amount: $114,923

Requiring Activity: Chief of Naval Operations (OP-9)

Proposal Description: This proposal was for a follow-on analysis of the comprehensive implications of strategic defense on the U.S. Navy. The analysis would deal conceptually with the advent of strategic defense technology and examine its effect on the change in the nature of future conflict, change in U.S. Navy missions, and allied roles in a strategic defense environment.

Assessment/Conclusion: The justification for the sole-source contract was the contractor's unique capabilities because only the contractor possessed an understanding of the logic and thought processes upon which the prior study effort (contract N00014-84-C-0745) was based. A sole-source notification was placed in the Commerce Business Daily for the acquisition. No other efforts were made to contact other potential sources.

We believe that the procurement should have been competed. The results of the first study could have been made available to other contractors. We believe competition was feasible because another source stated it could have performed the analysis and would have submitted a bid if the procurement had been competed.

C. Contract Number: N00014-86-C-0226

Contractor: Cortana Corporation

Contract Amount: $98,816

Requiring Activity: Chief of Naval Research

Proposal Description: The proposal was to provide a survey of Soviet technical influence on the development of advanced concept designs for future U.S. Navy submarines.

Assessment/Conclusion: The justification for the sole-source contract was the unsolicited proposal demonstrated a unique and innovative concept, the substance of which was not otherwise available to the Government. A market survey was not conducted and the requirement was not synopsized in the Commerce Business Daily. The survey was based on a literature search of Soviet basic and applied research efforts in various key submarine technologies. An official of the Naval Intelligence Support Center stated that at least 10 companies in the Washington, D.C., area could perform the tasks necessary. An official of one of these companies stated his company could have performed the analysis and may have bid on the procurement if it had been competed.

III. U.S. Army Missile Command

Contract Number: DAAH01-86-C-0175

Contractor: Analytical Assessments Corporation

Contract Amount: $208,600

Requiring Activity: Defense Advanced Research Projects Agency

Proposal Description: The subject of the proposal was a study on the application of supercomputing capabilities to the intelligence community. The objectives of the study were to identify and analyze present and potential processes and computer programs and develop programmatic examples for applying supercomputing capabilities to such intelligence programs.

Assessment/Conclusion: The justification for the sole-source contract was that only the contractor was capable of performing the work and that the unsolicited proposal demonstrated an innovative and unique concept. No efforts were made to solicit alternate sources, but experts in the DoD intelligence community were contacted concerning the existence of other sources. The contractor's staff included persons who had held positions within the OSD, the Defense Advanced Research Projects Agency, the Central Intelligence Agency, the Arms Control and Disarmament Agency, and other Federal offices.

Although the contractor's staff may have had experience in the area, we believe that the contractor's tasks were not innovative and unique. The identification of current and potential computer programs and the impact of supercomputing on strategic deterrence were tasks that should have been competed. We concluded that the procuring activity should have issued a sources-sought synopsis for the work. We identified several other consulting firms and research organizations with analytical capabilities comparable to the contractor's.

IV. Space and Naval Warfare Systems Command

A. Contract Number: N00039-86-C-0110

Contractor: Polaris, Inc.

Contract Amount: $198,346

Requiring Activity: Space and Naval Warfare Systems Command

Proposal Description: This proposal was for operation of a visitor control system for the Space and Naval Warfare

Systems Command. Visitor security verification would be provided via a contractor-owned microcomputer located within the building.

Assessment/Conclusion: The proposal was not innovative and unique. Even though the contractor stated it was not asked to submit the proposal, the firm was approached by program officials concerning the utilization of its services. Prior to the contractor submitting its proposal, a Navy program official visited another visitor control center operated by the contractor. Later, according to a contractor official, the firm, at the Navy's request, held discussions with Command security officials.

According to the sole-source justification, the requirement to increase physical security controls was established by Space and Naval Warfare Systems Command Notice 5510, dated July 16, 1985. The contractor's proposal was submitted on September 3, 1985. The Navy did not place a synopsis in the Commerce Business Daily and justified the sole-source procurement based on "unusual and compelling urgency." The authority for this exception is contained in Federal Acquisition Regulation 6.302-2, which states in part ". . . that agencies shall request offers from as many potential sources as is practicable under the circumstances." According to a Navy official, only one other contractor was contacted. However, there was no record of this contact to substantiate its occurrence or to determine its nature.

Sufficient time was available to contact other potential sources and if this had been done, other potential sources would have been located. We contacted another security firm in the Washington, D.C., area that was listed in the telephone yellow pages, and confirmed this company had experience in providing computer-based visitor control and would have submitted a proposal if it had been requested. According to a company official, the software for visitor control systems was readily available in the security industry, and many firms were potentially capable of providing such a service.

B. Contract Number: N00039-86-C-0429

Contractor: Arizona State University

Contract Amount: $35,000

Requiring Activity: Space and Naval Warfare Systems Command

Proposal Description: This proposal was to determine the effectiveness of a method of detecting and locating targets using sonar array data. The concept to be tested was developed under a prior Navy contract and was made public in three technical papers published by the principal investigator.

Assessment/Conclusion: The principal investigator (a college professor) stated that he did not consider this proposal to be innovative and unique because its purpose was to test the hypothesis developed and published as a result of the former contract. The principal investigator also named five other researchers capable of testing the hypothesis. A sole-source notification was placed in the Commerce Business Daily. No efforts were made to locate other potential sources. Based on the above, we believe the procurement should have been competed.

## SUMMARY OF PRIOR AUDIT COVERAGE

### General Accounting Office

Report OGC-85-14, "Federal Regulations Need to be Revised to Fully Realize the Purposes of the Competition in Contracting Act," August 21, 1985, addressed several issues relating to the Act's implementation including the provision for using the Act's first exception for unsolicited research proposals and the congressional intent to strictly limit the use of this provision.

Report MASAD-81-19, "Controls Over DoD's Management Support Service Contracts Need Strengthening," March 31, 1981, disclosed that 40 percent of a random sample of 256 management support service contracts resulted from unsolicited proposals. The report cited examples of proposals that were used to subvert the competitive process, that encouraged work not relative to DoD's needs and priorities, that resulted in DoD abrogating its management responsibilities, and that were not truly unique or innovative.

Report PLRD-81-45, "DoD Loses Many Competitive Procurement Opportunities," July 26, 1981, disclosed that a common element among procurements found to be inappropriate was their relatively small dollar value (under $1 million) and that the Defense Nuclear Agency had awarded four contracts resulting from unsolicited proposals that could have been competed.

### Office of the Inspector General, Department of Defense

Report No. 81-063, "Report on the Audit of the Defense Nuclear Agency's Procurement Program for Research, Development, Test and Evaluation Funds," March 6, 1981, stated that based on an audit of FY 1978 procurement actions, the Defense Nuclear Agency was inappropriately soliciting unsolicited proposals and informing contractors of available funds, allowing contractors to begin work before unsolicited proposals were received, and failing to prepare appraisals for contractor cost proposals.

### U.S. Naval Audit Service

Report No. T20172, "Multilocation Audit of Efficiency and Standardization of Automatic Data Processing Operations at Naval Shipyards," April 29, 1983, disclosed that contractors' unsolicited proposals were not being promptly evaluated.

Report No. C27631, "Research and Development Audit of the Aircraft and Crew System Technology Directorate, Warminster Naval Air Development Center," May 23, 1983, showed that unsolicited proposals were not being evaluated promptly.

Report No. S40691, "Special Audit of Contracting and Reimbursable Procedures at the Naval Biodynamics Laboratory, New Orleans, Louisiana," December 17, 1982, stated that the laboratory relied on unsolicited proposals to accomplish mission essential work and resulting contracts were routinely awarded on a sole-source basis.

ASSISTANT SECRETARY OF DEFENSE
WASHINGTON D C 20301-8000

JUN 15 1988

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MEMORANDUM FOR DIRECTOR, ACQUISITION SUPPORT PROGRAMS, IG - DoD

SUBJECT: Draft Report on the Audit of Sole-Source Procurements Resulting from Unsolicited Proposals (Project No. 7AP-026)

We appreciate the opportunity to furnish comments on the subject report. Our comments are confined to the Finding and Recommendation, which calls for the Under Secretary of Defense for Acquisition to take three actions: (1) emphasize the requirement for DoD program officials to return unsolicited proposals which are not innovative or unique; (2) provide additional guidance on what constitutes an adequate market research; and (3) direct contracting officers to challenge doubtful sole-source justifications.

The auditors disagree in 17 cases with the decisions and actions of the purchasing offices. You do not provide comments or explanations from the purchasing offices, which would enable us to evaluate the appropriateness of your recommendations. However, we do note that the recent revision of Defense Federal Acquisition Regulation 6.302-1(a)(70) published in Defense Acquisition Circular 86-11 (dated 31 March 88) is germane to a large number of the 17 cases, those pertaining to assistance and advisory services. It would be beneficial to evaluate the effect of the recent DEARS changes before we initiate new ones. In the meantime, we concur in the recommendation to the extent of reemphasizing the existing (and new) regulations.

Jack Katzen

Audit Response and Final Page No.

OFFICE OF THE UNDER SECRETARY OF DEFENSE

WASHINGTON D C 20301-2000

POLICY

30 MAY 1988

MEMORANDUM FOR OFFICE OF THE DOD INSPECTOR GENERAL
ATTN: MR. JACKIE R. CRAWFORD

SUBJECT: Draft Report on the Audit of Sole-Source Procurements Resulting from Unsolicited Proposals (Project No. 7AP-026)

This memorandum conveys OUSD(Policy) comments on and corrections to the subject report, as requested in your memorandum dated 30 March 1988. Our response endeavors to comment individually on specific findings and recommendations of the draft report. However, we believe several general points should be made in response to summary views expressed in the letter of transmittal cited above. Specifically, the potential value of the report as an aid to management is diminished significantly by the fact that numerous findings are impressionistic and have no objective basis in the documentary record reviewed by investigators. Such findings would more properly be considered assertions, and appear to be the consequence of an investigatory process that too frequently confuses means (e.g., competitive procurement) with ends (i.e., timely and efficient satisfaction of the government's requirements). For example:

Audit Note 1 in Appendix H

- The transmittal memo reflects the report's conclusion that "program officials accepted unsolicited proposals that were not innovative or unique, and....this sole-source contracting was contrary to the Competition in Contracting Act (CICA).." One might logically conclude from such a statement that officials failed to adhere to CICA provisions when, in fact, the opposite is true. With respect to uniqueness, the IG "finding" represents a value judgment of a non-specialist on research topics for which the OSD staff has professional expertise and, in many cases, recognized academic competence at the postgraduate level. With respect to the CICA, contract assessments and justifications are documented specifically to comply with the law and are certified by legal counsel to have done so before award. Hence broad assertions by investigators that contractor sourcing is contrary to law are clearly wrong. Such sourcings comply fully with law and regulation. What investigators meant to say, apparently, is that they view compliance as inadequate, notwithstanding judgments to the contrary by two sets of lawyers (OSD and DSS-W) and the Competition Advocate.

Audit Note 2 in Appendix H

Audit Note 3 in Appendix H

Audit Respon. and Final Page No.



- Of course, investigators are free to draw their own conclusions about the degree to which any given contract award complies with the spirit of the law. Moreover, it is clear that the opinions of investigators and sponsoring staff may influence specific awards and/or the IG's characterization of those awards. But there is neither a documentary record nor an objective measure that supports the IG's generalization concerning the law. Consequently, the finding represents a hunch at best and an operating bias at worst. What we have in this instance are personal views of investigators masquerading as legal judgments. Whether hunch or bias, the presentation of such views as legal judgments misinforms the reader, and their inclusion affords no basis for specific management improvements. Audit Note 4 in Appendix H

- The audit report and transmittal memo are similarly deficient with respect to judgments on the propriety of contract pricing and the value of goods or services received. The specific "potential savings" cited ($52,000 out of over $40 million), while subject to debate, is so trivial statistically as to require no lengthy comment here. Audit Note 5 in Appendix H

However, the assertion that late delivery of certain items (chiefly, analytical reports) "diminished their value" is not only wholly undocumented by the investigative record: it is also demonstrably incorrect. For the most part, we are dealing with two categories of tardiness: (1) reports that are "late" by consent of the DoD, be it formal or informal, in order to take account of additional, unanticipated research resources discovered in the course of basic performance, and (2) final reports that are "late", frequently for presentational reasons relating to public release, after a draft final report has been supplied to the DoD in a more timely manner. Audit Note 6 in Appendix H

- Under Category 1, the value of the item being procured does not diminish: it actually increases because the ultimate product is more comprehensive or its analysis more thorough by virtue of having considered the additional research resources. Under Category 2, the question of "diminished value" normally is moot, because the government's analytical requirements have been satisfied by the delivery of a draft final report. If the draft does contain recommendations of near-term value, officials do not wait for a final report to exploit those recommendations.

- It is a commonplace of the analytical community that final reports do not impart additional knowledge to the government, but instead incorporate editorial and minor

Audit Response and Final Page No.

-3-

technical corrections or "smoothing" to make the document more digestible to non-DoD audiences to whom it may be released. This finalization process may be quick or may be protracted, but it normally occurs without much bearing on the "value" of the product to the sponsoring component within the Department. Hence the "diminished value" finding by investigators does not represent an issue over which reasonable people may disagree. Rather, it reflects an unsupported assumption of investigators that, at least with respect to OUSD(P) projects, has the consequence of further misinforming and thereby misleading consumers of the audit report. Perhaps investigators assumed (incorrectly) that all analytical reports are highly perishable items which are keyed to rigid decision points, beyond which the potential impact of findings degrades rapidly. In the real world, most such analyses deals with the more fundamental, longer-term issues of policy and strategy. It must be so, because all forms of contracting (sole source and competitive) present such formidable leadtimes that one cannot focus contract analysis on near-term issues even if so inclined. In the time required to achieve award, the near-term issues will have changed. Although any political or strategic judgment will degrade over time, the half-life of broad policy recommendations is measured in months if not years. With few exceptions, the government as consumer is better served by the more comprehensive analysis later in exchange for the the less robust product available earlier.

Audit Note 7 in Appendix H

- A separate but related issue concerns IG criticism that certain contract products are not being delivered at all. In the area of Policy studies, this criticism was based on a superficial understanding of the purposes of various incremental deliverables, failing to distinguish between needed substantive deliverables and reporting intended to justify progress payments. Hence the criticism misses the point by suggesting that the government was somehow disadvantaged, either financially or otherwise, by not requiring a handful of interim technical and draft reports, when the purpose of such reports was only to provide a contract financing vehicle for small firms that might otherwise encounter cash flow problems. Interim reports were not submitted when the contractor elected not to obtain such financing - a choice of no interest or significance to the government consumer. Interim evidence of performance was not required because interim financing was not demanded. In lieu thereof, the government deferred all reimbursement until the contractor submitted his final report -- that being the only report of substantive interest to the DoD.

Audit Note 8 in Appendix H

Audit Response and Final Page No.



The enclosure provides comment on the body of the report itself, to include elaboration of general points cited above, where appropriate. Beyond the matter of compliance with law and regulation, however, it should be noted that the there are certain realities affecting the procurement environment in which unsolicited proposals are considered, and one ought not ignore the realities of competition for research and study-type contracts. For example, it should be recognized that competition in the award of such contracts occurs both formally and informally, and an unyielding institutional preference for the former will often achieve accountability only by sacrificing responsiveness. The relative efficiency of each form of competition depends to a degree on quantitative factors (e.g., contract cost savings resulting from competition vs. the cost of conducting a formal competition) but also on qualitative factors (e.g., the range of policy or program options emerging from informal competition and the business incentive to present such proposals versus the range of approaches taken in response to a single policy or program objective as articulated in a government solicitation). Although the procurement liturgy would appear to favor formal competition in virtually every case, the actual merits of relying on one or the other form of competition for any given procurement or class of procurements will depend, at a minimum, on (1) the estimated cost of the product or service, given our inability to reduce significantly either the baseline expenses of conducting a competition or its high cost relative to the sole source award process, and (2) how much is known with confidence about the product we desire. Audit Note 9 in Appendix H

Generally speaking, government is most in need of contract analytical support when it is least able to frame the issue to be studied with the precision demanded by solicitations, since an ability to structure the analytical requirement is half the task of solving it. Moreover, unsolicited proposals serve as an informal but powerful "bright idea factory" because problems and issues are presented for study from the perspectives of numerous independent organizations. When that sort of initiative and innovation is channeled exclusively or even primarily into responding to solicitations, innovation is tempered by a need to address problems from the narrower optic of the government official who prepared the solicitation. The contractor's economic incentive shifts emphasis from originality to simply telling that official what he wants to hear. Furthermore, the cost of conducting a formal competition for the high volume of small-dollar contracts normally associated with unsolicited proposals can generate tremendous inefficiencies in the pursuit of formal competition for its own sake. Audit Note 10 in Appendix H

Audit Response and Final Page No.



Despite the legitimate analytical and financial incentives for sole source awards in response to unsolicited proposals, the IG report focuses almost exclusively on procurement leadtime economies and a clubish desire to award contracts to favored firms as the perceived logic for such awards. These are perjorative inferences that do not suggest any mechanism for doing the government's business more efficiently or effectively. Audit Note 11 in Appendix H

We recognize that investigators were not asked to appreciate or describe the nuances of the competitive environment. Hence that lacuna in the analysis should not divert attention from what we view as the principal liability of the report. Rather, we are concerned by the report's repeated failure to base key findings on discovered facts, but instead to discount the sincerity of or motivation for DoD compliance with source justification requirements associated with unsolicited proposals. After all, it is one thing for the IG to discover a pattern of failure on the part of DoD employees to perform a necessary function (such as failure to perform safety inspections when required or failure to meet budget objectives), but it is quite another matter for investigators to discover compliance (in this instance, with procurement procedures) and simply assert that such compliance is disingenuous. The former category of finding is a genuine service; the latter merely a reflection of the operating assumptions of investigators. Audit Note 12 in Appendix H

That the audit on Project No. 7AP-026 displays the latter phenomenon is born out by the report itself. For example, at page 9 the report terms an unsolicited proposal as "not valid" largely because a DoD staff officer, in the course of proposal review, expressed his opinion that the proposal was not unique or innovative. However, a senior DoD official, with the benefit of the staff officer's assessment and the views of others, approved the project because that official did view the project as unique and innovative. Investigators present no compelling logic for embracing the staff opinion over the senior official's decision. As the investigators claim no expertise in the topic of study, one must assume endorsement of staff opinion merely because it coincides with the investigators' prejudices. The only other basis for a determination of invalidity is the statement (also p. 9) that "an official at a large university stated that the university would have been interested in performing this work and would have submitted a proposal if one had been solicited." As anyone familiar with studies contracting realizes, virtually all contractors (universities included), Page 6 in this Report Audit Note 13 in Appendix H Page 6 in this Report Audit Note 14 in Appendix H

Audit Response
and Final
Page No.



If asked, will declare themselves qualified to do anything. The point here is that the university was afforded an opportunity to develop a proposal and give evidence of its qualifications in response to Commerce Business Daily (CBD) announcement of the proposed award, and the university elected not to do so. One cannot plausibly argue that the university was unaware of the announcement, as the medium in which it was published is the same as would present any competitive solicitation, and all university contracts and grants offices follow the CBD. Why, then, does the IG report assume qualification or attach any significance whatsoever to the remarks of an unnamed official at an unnamed university?

Audit Note 14 in Appendix H

As to the action recommended by the report, we will again remind staff personnel to comply with requirements pertaining to service as contracting officer representatives. Our published staff guidelines already do so, as does the procurement staff's memoranda of instruction to CORs. However, we cannot concur in the findings of the report, for reasons described above and in the enclosure.

Audit Note 15 in Appendix H

Andrew W. Marshall
Director, Net Assessment

Enclosure (a/s)

cc: Military Assistant, OASD(ISA)

Audit Response and Final Page No.

Enclosure:

DETAILED COMMENT ON DRAFT REPORT, PROJECT NO. 7AP-026

Page 1, Line 13:

The report notes that "The substance of the unsolicited proposal must not be available from another source." The term "substance" requires greater definition, as varying interpretations preclude meaningful management improvements. Current J&A's attempt to isolate the "substance" and describe innovation and uniqueness in relation thereto. That the IG is unsatisfied with OSD interpretations is evident from the balance of the draft report, but a preferred interpretation is not described.

Page 1 in this Report

Audit Note 16 in Appendix H

Page 1, Line 15:

The bases for restricting competition under P.L. 98-369, as amended, should be described in full and in context, to include the range of exceptions in CICA availing single source award and limited competition. Since the audit report does not limit itself to criticism of sole sourcing, but also criticizes limited competitions that are described as too limited (as in Appendix D), the document should acknowledge the legal rationale for limited competition (e.g., national security considerations, urgency, etc.).

Page 1 in this Report

Audit Note 17 in Appendix H

Page 7 inclusive:

As described in part in the covering memorandum, we non-concur in the finding that a large number of sole source awards were based on unsolicited proposals that were not innovative or unique. We acknowledge that any conceivable set of standards for proposal review will fail from time-to-time, but quarrel with the report's statistics for non-compliance because it presents no compelling objective evidence for its assertion, while significant evidence exists to counter the assertion. Specifically:

Page 5 in this Report

Audit Note 18 in Appendix H

- In criticizing the scope of market searches by program officials, the report fails to acknowledge that announcement of intended awards in Commerce Business Daily itself constitutes a broad-based market search before award, that being the specific intention of lawmakers in requiring such announcements.

Audit Note 19 in Appendix H

- Characterization of any unsolicited proposal as "innovative and unique" or not so is an inherently subjective enterprise unless such a proposal represents plagiarism. Such characterization by program officials is based on specific area expertise, and has been endorsed by legal counsel and the Competition Advocate.

Audit Note 20 in Appendix H

Audit Response and Final Page No.

-2-

Page 8, Line 13: — Page 5 in this Repor

Report asserts that program officials sought sole source procurements, in part, because "...they wanted a particular contractor to do the work...", implying business favoritism. In fact, specific expertise is sought to perform certain analysis, wherever that expertise may reside. This is not properly an indictment of sole sourcing, but a legitimate basis for such an award. — Audit Note 21 in Appendix H

Page 8, Paragraph 2: — Page 5 in this Repor

Contract MDA903-86-C-0044 (Pacific Forum) is criticized largely on the strength of internal OUSD(Policy) assessment produced incident to proposal review. Investigators elected to endorse the views of a program review official over the views of the Under Secretary for Policy as to whether the proposal was unique and innovative. Investigators provide no objective basis for this preference. Rather than demonstrating conclusively any particular defect in the proposal, we would argue that the same contract file record demonstrates that the Under Secretary for Policy established a procedure to insure that he was presented with both pro and con arguments for a proposal before providing his endorsement. The review procedure established by the USD Policy has been codified and adopted throughout OSD via a procedures manual with which investigators are or should have been familiar. Among other things, it establishes an independent review activity which virtually always presents counter-arguments to those of staff organizations seeking award. This is emblematic of a healthy review process, and provides no basis for second-guessing the decision on the contract at issue. — Audit Note 22 in Appendix H

Page 11, Line 3: — Page 7 in this Repor

The report presents no logic for describing CBD notices as an ineffective market search technique. Given the fact that such notices are made available to a virtually identical audience of contractors as would respond to a notice of a Request for Proposals appearing in the CBD, the report's conclusion is without foundation. The phenomenon of whether or not contractors choose to submit a statement of qualifications in response to such announcements offers no basis for judgment, as such decisions reflect the business decisions of firms that have been made aware of the government's requirement rather than any evidence that firms were excluded from consideration. A more useful test of the CBD notice process as an indicator that awards in response to unsolicited proposals are or are not appropriate would have — Audit Note 23 in Appendix H; Audit Note 24 in Appendix H

Audit Response and Final Page No.

-3-

been to look at the award challenges received in response to CBD notices and calculate the percentage of challenges that are successful. Statistics discussed on page 12 of the report constitute a very small and preliminary sampling which does not endorse the report's views on notice utility.

Page 7 in this Report

Page 11, Paragraph 2:

Page 7 in this Report

The report's criticism of award for a study of the Soviet Art of War in the 1990's is no less and no more than a disagreement between investigators and program officers as to what level of contractor competence constitutes an ability to satisfy the government's minimum needs. The report confuses willingness on the part of multiple contractors to undertake a study as evidence that more than one contractor is capable of satisfying those needs. There will always be more than one contractor willing to assert competence and take the taxpayer's money to perform a study of any subject. Discrimination of professional competence among such contractors is a legitimate function of program officials: it is not, ipso facto, a demonstration of minimal competence by all who claim such.

Audit Note 25 in Appendix H

Page 12, Paragraph 2:

Page 7 in this Report

In discussion of market searches, the report ignores the fact that program officials, by reason of expertise in the subject matter of contracts for which they are responsible, routinely possess expertise on available sources. This is not to be discounted because such individuals did not ask firms they knew to be unqualified whether or not they were qualified. The underlying logic is perverse: such individuals hold positions of responsibility in government because it has been determined that they know their subject which, virtually without exception, means they know the analytical community in their field of specialization. However, efficient application of such knowledge invites criticism in matters of contract award. The only sure way for government experts to avoid criticism with respect to source selection is to behave as if they knew nothing at all by inviting proposals from the unqualified when an unsolicited proposal has been received. The perception that investigators approached this report with strong working assumptions is never more clear than in the expressed view that failure of 26 CBD notices to generate formal competition, or to generate more than a handful of capability statements, is anything other than an endorsement of the propriety of the original sole sourcing actions. Instead,

Audit Note 26 in Appendix H

Audit Response and Final Page No.

-4-

investigators would have us believe that other qualified contractors, despite awareness of requirements via the CBD, simply elected not to pursue the business opportunities for which they were qualified. Contrary to the draft, notifications do not mean, in fact or in law, that a government agency has made a firm decision to award a sole source contract. Rather, notifications express intent unless the notification process itself reveals other qualified bidders. — Audit Note 26 in Appendix H

Page 13: — Page 7 in this Report

Sources-sought synopses and similar devices should only be employed when program officials believe there is reasonable expectation of tangible yield. Routinely invoking all manner of search technique when program officials believe the technique they have employed is valid and the contractor genuinely sole sourceable is akin to a doctor performing endless unnecessary tests when no medical indicators are present, but merely to avoid malpractice claims. When the doctor follows this course, medical costs skyrocket for no valid reason. When the program official does so, the cost of government rises and responsiveness is sacrificed to ever more bureaucratic documentation of accountability. The report's treatment of this problem does not approach even-handedness and displays no sense of the cost of competition. For example, one could easily generate $150,000 in costs to obtain a $50,000 deliverable product by formal competition because of the extensive time and attending cost of (1) professional staff evaluation of proposals, the cost of which does not vary significantly by size of award, (2) procurement staff technical assessment of costs, the burden of which is five to ten times greater for competitive than for non-competitive awards, (3) the administrative burden of effecting solicitation, and (4) the unfavorable ratio of research time to proposal development/marketing time among contractor professional staffs, prompting increased overhead costs when firms convert from development of unsolicited proposals to bid response organizations. — Audit Note 27 in Appendix H; Audit Note 28 in Appendix H

Page 17, Line 17: — Page 13 in this Report

The report cites $52,000 in payments to contractors that "had not fulfilled their contract requirements." While the sum represents an infinitesimal fraction of the value of contracts reviewed, the portion thereof relating to OUSD(Policy) contracts was not paid to contractors who failed to meet the substantive analytical requirements of their contracts (see page 3, paragraph 2 of covering memorandum and comments below on page 21 of IG report). — Audit Note 29 in Appendix H; Page 15 in this Report

Audit Response and Final Page No.



Similarly, late delivery of final reports did not diminish project value. Investigators have drawn that conclusion based on no evidence whatsoever.

Page 19, Paragraph 2:

Page 14 in this Report

The report's rendering of changes to contract MDA903-86-C-0154 is not disputed, but is necessarily incomplete because is does not cite significant intelligence considerations pertaining to this contract.

Audit Note 30 in Appendix H

Page 20:

Page 14 in this Report

Delayed delivery of the final report for contract MDA903-86-C-0062 had no bearing on the utility of the contractor's findings, on account of prior delivery of the draft final report.

Page 21, Paragraph 2:

Page 15 in this Report

Interim deliverables under contract MDA903-86-C-0032 were financing vehicles for progress payments, which the contractor did not claim, and for which no requirement existed (see page 3, paragraph 2, of covering memorandum). Investigators have insisted on treating interim reports as substantively discrete deliverables, despite the fact that such reports were as described above and investigators have been advised of that fact on numerous occasions.

Audit Note 5 in Appendix H

Page 33 - MDA903-86-C-0037 (Booz, Allen)

Page 31 in this Report

The "Assessment/Conclusion" states "... the contracting office placed a sources-sought synopsis in the CBD for a related effort that involved the same wargaming methodology and obtained four proposals..." This entry ignores chronology, and thereby creates the impression that the cited contract and the sources-sought synopsis were conducted more-or-less simultaneously, from which one would conclude either that (1) the sole-sourcing was inappropriate or (2) that one of the procurement actions was redundant. Neither conclusion would be accurate. It must be noted that the sources-sought competition was conducted as a follow-on to the Booz, Allen contract, in keeping with procurement guidance that one attempt to compete continuing requirements. Moreover, multiple responses to the sources-sought competition do not comment adversely on initial sole

Audit Note 31 in Appendix H

Audit Response and Final Page No.



sourcing, since the work performed under the initial contract provided the DoD with better information and capability to define a competitive statement of work.

Page 33-34 - MDA903-86-C-0063 (Boeing) — Page 31 in this Report

The "Assessment/Conclusion" is inconsistent: first noting the classified aspects of the project, and then proclaiming that broader competition should have been sought. The entire research package was classified -- the statement of work, source justification, etc. -- and therefore ruled exempt from CBD publication. The government's interest in protecting certain sensitive operations and inquiries is not a trivial concern to be sacrificed at the alter of competition. Another approach to treatment of this contract would be to remove it from the report, since it falls outside the report's subject area (i.e., limited competition vs. sole source award). — Audit Note 32 in Appendix H

Page 35, Sumner Associates (MDA903-86-C-0062): — Page 33 in this Report

The report's description of the source selection process is inaccurate and incomplete. The report fails to note facts made available to investigators: that OASD(ISA) and OUSD(P) officials who reviewed the contractor's initial proposal determined that it was not suitable for sole source award; and that elements of it could be undertaken on a competitive basis. Accordingly, a competitive RFP was developed and an award made to another firm, despite the fact that Sumner Associates bid on the RFP. The contract Sumner received represented that portion of its proposal that was deemed to be appropriately sole sourceable. These circumstances are thought to be fully in keeping with the letter and the spirit of competition laws and regulations. The IG report's rendering of these events (or failure to do so) distorts the circumstances of award, ignores successful efforts to derive a competitive procurement for a significant portion of this requirement, and provides no substantive argument for competition of the sole sourced portion of the work. — Audit Note 33 in Appendix H

Page 36, Pacific Forum (MDA903-86-C-0044): — Page 34 in this Report

See comment on page 8, paragraph 2 of IG report (above).

Page 39, Line 1 (Rekenthaler Tech. Assoc. Corp., MDA903-86-C-0078): — Page 36 in this Report

The report asserts that the COTR identified four other firms capable of performing the study. The COTR indicates that he did not do so; that investigators evidently have misidentified their source of information. — Audit Note 34 in Appendix H

## DETAILED RESPONSES TO THE UNDER SECRETARY OF DEFENSE FOR POLICY, DIRECTOR, NET ASSESSMENT, COMMENTS

To assist the reader, the number in the left column of this Appendix can be matched to the same number in the right margin of the Director, Net Assessment, response at Appendix G.

### Audit Response

1. Legitimate reasons may preclude the use of competition for some contracts. During the audit, we determined who required and approved the decision to negotiate noncompetitively and what the justification was for going sole-source. We wanted to be assured that the sole-source decisions were not arbitrary, and that a reasonable effort was made to identify or attract other sources.

2. The finding is based on our conclusions that assertions made by the technical end-user personnel to "justify" noncompetitive procurement were not adequately supported. We did not make any value judgments on the specific research topics.

3. The contracts in question do not comply with law and regulations simply because legal counsel concurred with the justifications. The legal counsel only concurred with what was presented. Information regarding the extent to which other potential contractors may have existed was not always clearly presented in the justifications. Consequently, legal counsel concurrence was based on less-than-complete information in the justification. We still believe that the sole-sourcing of the cited contracts was contrary to the Competition in Contracting Act for the reasons discussed in Part II of this report.

4. These comments are totally inappropriate. Our conclusions were based on documentation in contract and program office files and on documented interviews with Government and contractor personnel. All the contracts reviewed were treated equally using the same criteria. The criteria used in making our conclusions were the Competition in Contracting Act; the Federal Acquisition Regulation, Part 6; a General Accounting Office Audit Guide for evaluating the appropriateness of noncompetitive contract decisions; and the "OSD Manual of Procedures for Obtaining Studies and Contracts for OSD/OJCS." Our conclusions were based on a thorough review of each contract and not on hunches or operating biases.

5. The audit did not make a judgment on the propriety of contract pricing. As discussed in Finding B, we concluded

that contract administration was not adequate to ensure that contractors complied with contract requirements and that payments to contractors were appropriate. We questioned the appropriateness of payments to specific contractors as opposed to the contract price. The appropriateness of the payments were questioned because the CORs, without the knowledge of the contracting officers, allowed changes in the scope of work, altered delivery schedules, did not monitor contractor performance, and allowed contractors to not deliver items specified in the contracts.

6. When a contractor does not meet the contract delivery schedule, the value of the product is diminished and the Government should receive adequate consideration. The Director, Net Assessment, condones contractor delinquency by rationalizing that untimely performance enhances the quality of the final product. This reasoning is not consistent with specific facts presented in the report. The value of the final product on contract MDA903-86-C-0158 was diminished because a report had not been delivered and the COR believed the contractor had stopped work because of technical difficulties. On contract MDA903-86-C-0062, the contractor was requested to make significant changes in the draft report. Only a few minor changes were actually made, and those changes did not change the tone or content of the final report. The contracting officer also concluded that the final report was not materially different from the draft report. The report that was finally received will not be distributed to other Government activities, such as the State Department, because the program office did not consider the report to be of high quality.

7. We did not make any assumptions regarding the perishability of the analytical reports submitted to the Office of the Under Secretary of Defense for Policy (OUSD(P)) by contractors.

8. We recognize the purposes and value of interim and draft technical reports. Our criticism concerned the inattention of the CORs to their duties and contractors not performing in accordance with contract terms. The Government is entitled to receive the level of performance for which it has contracted, not something less. The Director, Net Assessment, is inconsistent in his comments regarding interim and draft reports. These comments suggest that in OUSD(P) studies, interim and draft reports are merely a contract financing vehicle. Elsewhere in the response, the Director, Net Assessment, argues that draft reports are important and that officials do not wait for a final report to exploit study recommendations. The delivery of interim technical and draft reports was a material requirement of the contracts because each interim technical report was to ". . . be of

technical publication quality, including appropriate subject matter references." The Government was disadvantaged by receiving the report a year late, particularly when the Government had not received any interim reports providing the Government with preliminary conclusions. A concern about the contractor's performance was finally expressed on August 21, 1987, 9 months after the final report was due. The COR wrote to the contractor requesting a status report and advising that contract termination would be requested unless some evidence of substantial progress was reported.

9. The Competition in Contracting Act was passed because restrictions were needed to control the use of noncompetitively negotiated contracts. Effective competition is predicated on advance procurement planning, an understanding of the marketplace, and all contractors being given an opportunity to compete for a Government contract. Informal competition, mentioned in the Director, Net Assessment comments, is the avenue to favoritism and the mischief of making contracts privately, which are unacceptable procurement practices. The 11 OSD contracts that we identify in the report should have been awarded using competitive procurement procedures. The average cost of the 11 contracts was over $390,000, with the smallest contract being $39,000 and the largest being $2,255,451.

10. The competitive process provides a means for finding out what is available to meet Government needs and choosing the best solution. Solicitations can be written to invite interested contractors to submit proposals on particular research topics, and need not stipulate detailed specifications that shift emphasis from originality. The perceived high cost of competing contracts is not a specific exception to full and open competition that is authorized by the Competition in Contracting Act and Federal Acquisition Regulation, Part 6.

11. The Director, Net Assessment, by his lengthy comments, has not established that legitimate analytical financial incentives actually existed to justify the sole-source awards.

12. These comments are inappropriate. The key findings were based on discovered facts, not assumptions. The pattern of failure was not at DoD field activities, but primarily within the Pentagon building.

13. Contract MDA903-86-C-0044 should have been awarded using competitive procurement methods. This conclusion that the proposal was not innovative and unique was not only supported by the staff officer (Director of Policy Research) but also by the fact that the study had been previously deemed suitable for competitive award. We found no evidence to show

how or why circumstances may have changed to warrant a sole-source contract, except the justification that competitive procedures would have taken too long. In an interview with us, the Director of Policy Research stated that he had recommended the study not be funded because it was not unique or innovative. The Director further stated that any firm having political science expertise should be able to do the tasks required by the statement of work for the contract. In an attempt to validate this comment, we contacted a large university with a notable political science department. A responsible official within the university stated his university would have been interested in the work and would have submitted a proposal if solicited. We believe that additional contacts would have produced the same results.

14. Several contractors contacted during the audit stated that they were not qualified to perform the work in question. The Director, Net Assessment, commented that the university was given an opportunity to develop a proposal and give evidence of its qualifications in response to the Commerce Business Daily (CBD) announcement of the proposed award. However, the university official stated that his university would not respond to sole-source CBD notices because of the low probability of obtaining a contract. Sole-source CBD notices do not provide contractors an equal footing from which to begin to prepare their bids or proposals.

15. The comments do not describe when or how the staff personnel would be reminded to comply with requirements pertaining to serving as contracting officer representatives.

16. Neither the Competition in Contracting Act nor the Federal Acquisition Regulation defines the term "substance." Absent a specific definition, we used the definition in Webster's Ninth New Collegiate Dictionary, dated 1984.

17. The exceptions to full and open competition in Public Law 98-369, the Competition in Contracting Act, are restated in Federal Acquisition Regulation, Subpart 6.3. All 66 contracts included in our review were sole-source awards and none were awarded using limited competition. We see no rationale for describing the range of exceptions.

18. In response to the Director, Net Assessment comments, we specifically reevaluated the conclusions on the contracts awarded by DSS-W. We reevaluated the DSS-W contracts using the guidance provided in the Manual of Procedures for Obtaining Studies and Contracts for OSD/OJCS, dated June 1986. This manual was prepared by the Office of the Under Secretary of Defense for Policy; Director, Policy Research. This additional criteria served to strengthen and reinforce the initial conclusions reached in the audit report.

19. The purpose of preaward notices in the Commerce Business Daily is to open competition to all offerors who can meet the Government's needs. However, notices that provide incomplete or inaccurate information and sole-source notices that discourage proposals for the prime contract do not effectively serve that purpose. Based on the results of this audit, we believe sole-source notices in the CBD are not as effective market search tools as competitive preaward notices or sources-sought synopses. In 1987 the General Accounting Office and the Navy Competition Advocate General also had concerns about the effectiveness of preaward notices for noncompetitive procurement.

20. The characterization of an unsolicited proposal as innovative and unique must be based on a thorough technical evaluation that determines:

- only one source is fully qualified to perform the proposed work; or

- the proposal offers a significant scientific or technological promise, represents original thinking, and was submitted in confidence by one source.

Public Law 100-202, Section 8029, December 22, 1987, has stipulated these criteria for funding contracts for studies, analysis, or consulting services entered into without competition on the basis of unsolicited proposals.

21. Our audit documented that program officials justified sole-source contracts resulting from unsolicited proposals because program officials preferred less time-consuming sole-source contracts or wanted particular contractors to do the work. This occurred although the "Manual of Procedures for Obtaining Studies and Contracts for OSD/OJCS" stated that the following criteria are not objective criteria on which sole-source awards may be based.

- Experience is evidence that a requisite capability exists, not that the contractor's qualifications are unique.

- The proposal is unsolicited.

- There is confidence that a particular source can perform satisfactorily.

- High-level preference for a particular contractor is present.

- A particular source is in the "best interest of the Government."

- A particular source is best qualified or well qualified.

- A particular source will produce the best quality product.

- A particular source has access to U.S. Government information.

- A particular source is the only known source; and competition under these circumstances will determine whether others exist.

- A particular source can perform quickly (except in those few cases where time can be justified as a critical, overriding requirement). In those cases, it may be more appropriate to cite the "Unusual or Compelling Urgency" exception contained in the Competition in Contracting Act.

We found that nearly all these criteria were used to justify awarding the sole-source contracts that we concluded should have been awarded competitively.

22. Audit Note 13 discusses our rationale for concluding that the use of sole-source procurement procedures on contract MDA903-86-C-0044 were inappropriate. The justification for awarding this sole-source contract does not comply with the "Manual of Procedures for Obtaining Studies and Contracts for OSD/OJCS." Furthermore, the same OUSD(P) program review official who prepared the Manual also questioned whether the unsolicited proposal for contract MDA903-86-C-0044 was innovative and unique.

23. The effectiveness of preaward notices in the CBD of noncompetitive procurements was previously discussed in Audit Note 19. The report supports the logic for describing CBD sole-source notices as an ineffective market search technique. The ineffective methods used did not identify other potential sources. We identified additional sources for 13 of the 17 contracts and believe that other sources could have been identified for the other 4 contracts if we had attempted to do so. We stated that the ineffective market searches were limited to placing sole-source notifications in the Commerce Business Daily or contacting Government personnel. Sole-source notifications are not an effective form of market search because they indicate that the Government has made a firm decision to award a sole-source contract. The sole-source notifications do not encourage other contractors to submit proposals. Several contractors we contacted stated that they do not respond to sole-source notices because they believe it is a waste of

time because the Government has already made its decision. The fact that no inquiries are received following a CBD announcement should not be viewed as conclusive evidence that there are no capable firms interested in a given procurement. Such minimal efforts can discourage contractors from expressing interest. Market research is meant to be an active, not reactive, search for prospective offerors, and if effective competition is seriously being sought, more extensive market survey initiatives are required. Based on our review of the contract files it was evident that, for the 11 DSS-W contracts identified in the report, program officials did not want competition and CBD notices were only submitted to meet legal requirements.

24. A review of contract award protests received in response to the CBD notices would not provide meaningful data to support the utility of the CBD notices. While the use of formal contract award controversy forums is extensive, protests occur in only a small portion of the procurements in which some party believes there has been a failure to observe the appropriate rules. Some cases are never protested. Others end at the procuring agency because the requested relief has been granted, the matter has been explained to the protestor, or the protestor has decided not to pursue the matter further.

25. The information in the report on this contract is not simply a disagreement on what level of contractor competence constitutes an ability to satisfy the Government's minimum needs. The report did not question the competence of this particular contractor or any other. The report questioned the reluctance to seek competition when it was readily apparent that competition could have been obtained. More specifically, the record showed that this contract was awarded on a sole-source basis because that was what the former Assistant Secretary of Defense (International Security Policy) wanted. When the contractor could not perform the original study because of concerns about access to Pentagon libraries and materials, the contactor was allowed to perform a completely different study, again without the benefit of competition and without notifying the contracting officer. We found no basis to support the comment that there will always be more than one contractor willing to assert competence. The contractors that we contacted did not always make such assertions. An anonymous letter sent to the contracting officer 3 months before the contract was awarded identified seven contractors and nine individuals who were described as equally if not more qualified to perform the subject study. There was no evidence to show that either the contracting officer or program officials contacted any of these firms or individuals to determine if they were capable of performing the work. Two individuals named in the letter

informed us that their companies were capable of performing such a study. One contractor also stated that several other companies and individuals, some of which were identified in the letter, could have performed the original study, particularly since it was to be based on unclassified open source material.

26. We have not challenged the expertise of the program officials, but it is doubtful that OUSD(P) program officials would be totally current and fully aware of all potential sources for all projects. We have not suggested that Government officials invite proposals from the unqualified as the Director, Net Assessment suggests. We believe that the existence of only one source should be a matter of fact, and not a matter dependent on the relative and limited knowledge of the program or contracting officer. The purpose of market searches is to identify potential qualified sources. Effective market searches in addition to the expertise of program officials, technical evaluations, and competition, provide the most assurance that a particular source is the only qualified source or if a source is qualified to perform the required work.

27. We agree that sources-sought synopses should be used when program officials believe there is reasonable expectation of tangible yield. The identification of additional potential sources on 13 of the 17 contracts identified in the report should be considered as reasonable expectation of tangible yield. In a September 7, 1984, memorandum on the subject of market research activities, the Deputy Secretary of Defense recognized that the impediments to competition are deeply seated and require active management attention. The Deputy Secretary stated that early industry involvement should be encouraged through market research activities such as "sources-sought" synopses. He also stated that DoD Components must actively seek competitive sources and not just passively wait for them to identify themselves, and that early involvement by program management, contracting, requirements, and technical personnel was necessary to develop a sound acquisition approach. We still believe that more extensive market research by program officials on these contracts would have identified additional qualified sources.

28. There is an added administrative burden to the Government when it attempts to obtain competition that does not exist for sole-source procurements. However, the Director, Net Assessment's, argument regarding the cost of competition is not germane or valid because the Competition in Contracting Act requires full and open competition unless one of seven exceptions apply. The arguments made by the Director, Net Assessment, support our position that OUSD(P) program

officials preferred less costly and time-consuming sole-source contracts or a particular contractor to do the work.

29. These comments indicate a disregard for proper procurement procedures. Only contracting officers acting within the scope of this authority are approved to execute contract modifications on behalf of the Government. OUSD(P) program officials, as CORs, are not authorized to direct or encourage the contractor to perform work that should be subject to a contract modification. By openly encouraging or insisting on continued performance when the contract is in a delinquent status, or by failing to take any action, legal authority may determine that the Government has waived its right to terminate the contract for default. The Armed Services Board of Contract Appeals has determined that on contracts where substantial performance has occurred, the Government's damages for a failure to comply strictly with the specifications will be limited to the reasonable value for unperformed work. The Government should also receive consideration when the contractor does not meet the contract delivery schedule, and the schedule must be revised for inexcusable reasons.

30. The intelligence considerations pertaining to this contractor were not discussed in the report because they had no bearing on why the contract was not awarded competitively, and why the contracting officer was not notified that a different study would be performed. We are concerned that the Director, Net Assessment, did not provide any explanations for or comments on these issues.

31. The sources-sought synopsis for the related effort that was conducted as a follow-on to the Booz, Allen and Hamilton contract was included in the report simply to demonstrate that other potential sources were available for the $2.3 million contract. The Director, Net Assessment stated that the sources-sought notice for competitive procurement was conducted in keeping with procurement guidance to compete continuing requirements. We believe this comment supports our conclusion that the contract with Booz, Allen and Hamilton should have been competed because, as stated in the report, it was a continuation of a project that had been ongoing since 1981.

32. Our assessment/conclusion concerning this contract is correct. The authority cited for not obtaining full and open competition was United States Code, title 10, section 2304(c)(1), "Only One Responsible Source." United States Code, title 10, section 2304(c)(6), "National Security," is the proper authority to cite when the disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the

number of sources from which it solicits bids or proposals. Even if the acquisition had qualified for an exemption under the "National Security" exception, the Federal Acquisition Regulation does not allow a sole-source award merely because the acquisition is classified. This limitation is reemphasized in the "Manual of Procedures for Obtaining Studies and Contracts for OSD/OJCS." The fact that the acquisition was classified should not have precluded attempts to obtain competition. We still believe that the requirement for this study should have been competed for the reasons stated in Appendix D to this report. Consequently, we see no need to remove this contract from the report.

33. A portion of the work originally proposed by Sumner Associates was awarded competitively. However, available records showed that Sumner Associates did not submit a bid on the competitive portion of the work but was proposed as the sole subcontractor for the firm that won the award. The portion of work that was competed was smaller than the sole-source work performed by Sumner Associates ($51,598 versus $139,276). These circumstances do not negate our conclusion regarding this contract. Available information did not provide evidence to support that Sumner Associates was the only responsible source. The fact that a portion of the work was awarded competitively indicates that there were other potential contractors who could have also performed the study. Also, the proposal Sumner submitted was general and did not contain sufficient information to demonstrate that the nature, concept, or study approach was unique and innovative. Further, there was no evidence to substantiate that a market search was conducted to identify other potentially capable contractors. We still believe the requirement should have been competed because we located a contractor that stated it could have performed such a study and would have submitted a proposal had the procurement been competed. The responses by three other contractors to the companion competitive procurement indicated other potential sources were available.

34. We have revised the report to indicate the contracting officer representative. Both references refer to the same individual. In a telephone conversation in June 1987, the contracting officer representative, Lieutenant Colonel Gladstone, identified four other contractors with capabilities to perform the subject study. We subsequently followed up with two of these contractors, and officials of the two contractors confirmed that their firms had the capabilities and may have bid on the study. One official also identified two other contractors that were capable.

DEPARTMENT OF THE ARMY
ADMINISTRATIVE ASSISTANT TO THE SECRETARY
WASHINGTON D.C. 20310-0105

25 May 1988

MEMORANDUM FOR DOD INSPECTOR GENERAL

ATTN: ASSISTANT INSPECTOR GENERAL FOR AUDITING

SUBJECT: Draft Report on the Audit of Sole-Source Procurements Resulting from Unsolicited Proposals (Project No. 7AP-026)

In response to DODIG memorandum, 30 March 1988, subject as above, the Department of the Army's comments to Part II, Section B.3, of the report are attached.

Milton H. Hamilton

Milton H. Hamilton

Attachment

RECOMMENDATIONS AND COMMENTS RE PART II, SECTION B.3, OF DOD IG DRAFT AUDIT REPORT (IG recomendations are in CAPITALS)

a. CONTRACTING OFFICERS TO REEMPHASIZE IN A MEMORANDUM TO THEIR CONTRACTING OFFICER REPRESENTATIVES THE IMPORTANCE OF COMPLYING WITH THE APPOINTMENT LETTERS, PARTICULARLY REGARDING REPORTING CONTRACTOR PERFORMANCE AND DELIVERY OF REQUIRED PRODUCTS.

Concur. The necessity to emphasize the importance of complying with the appointment letters will continue to be stressed. Since the award of the contracts studied, DSS-W has published a contracting officer representative (COR) handbook and is in the process of developing a COR training course. Additionally, the DSS-W Acquisition staff have been sensitized to the problem and are encouraged to discuss COR roles, responsibilities, etc., with the COR's prior to award of contracts. We believe these efforts to be equally effective as mailing individual memoranda.

b. CONTRACTING OFFICERS TO FOLLOW UP WITH CONTRACTING OFFICER REPRESENTATIVES WHEN PROGRESS REPORTS OR DELIVERABLE ITEMS ON CONTRACTS ARE NOT PROVIDED IN A TIMELY MANNER.

Concur. Virtually all of the contracts of the type examined by the IG are administered by Administrative Contracting Officers (ACO's) from the Defense Contract Administration Service Management Areas (DCASMA's), or, in the case of contracts with universities, ACO's with the Office of Naval Research. We believe a higher level of surveillance by the ACO's would mitigate this problem.

c. CONTRACTING OFFICERS TO INCORPORATE ADEQUATE REPORTING REQUIREMENTS IN CONTRACTS. THESE REPORTING REQUIREMENTS SHOULD, AS A MINIMUM, PROVIDE INFORMATION ON SUCH ITEMS AS MILESTONES MET OR MISSED; ITEMS DELIVERED; PROBLEMS ANTICIPATED OR ENCOUNTERED; AND, WHEN APPROPRIATE, CURRENT FINANCIAL STATUS TO INCLUDE COSTS BILLED, AND FUNDS EXPENDED AND REMAINING ON CONTRACTS.

Concur. Meaningful reporting requirements are the rule for contracts written by DSS-W. Acquisition staff are encouraged to elicit appropriate reporting requirements from the customer agency if they are not specified in the requisition package or are deemed insufficient. We believe that the problem is not so much with the absence of contract report requirements as it is with either the failure of the contractor to furnish these reports or the COR to act promptly on the reports when received, or a combination thereof. COR's should be held to the level of performance specified in their letters of instruction. The contracting officer does not rate the COR; his/her supervisor does.

d. CONTRACTING OFFICERS TO ADD A REQUIREMENT TO THE APPOINTMENT LETTER REQUIRING CONTRACTING OFFICER REPRESENTATIVES TO PROVIDE A

WRITTEN CONTRACT STATUS REPORT TO THE CONTRACTING OFFICER AT LEAST QUARTERLY.

Do not concur. Improving the meaningful communication between the COR and the contracting officer should result from closer adherence by the COR to the reporting requirements specified in the contract and the appointment letter. Current instructions require the COR to "insure that the Contractor is in compliance with all technical aspects of the contract". It further requires the COR to submit required reports in a timely manner. Another official reporting requirement, particularly considering today's staff constraints, would serve no useful purpose. As indicated above, increased customer agency oversight of its COR's performance is required in order to discipline the system rather than additional paperwork requirements.

e. THE CONTRACTING OFFICER FOR CONTRACT MDA903-86-C-0032 TO REVIEW CONTRACT PERFORMANCE TO DETERMINE IF A DOWNWARD PRICE ADJUSTMENT IS WARRANTED SINCE THE CONTRACTOR DID NOT DELIVER TWO OF THE THREE REPORTS SPECIFIED IN THE CONTRACT.

The contract has been reviewed and we found that a downward price adjustment is unwarranted. The contractor did not deliver the two interim reports, but the government was not disadvantaged thereby. A review of the contractor's technical proposal revealed that only a final report was to be delivered and that was the only report ever required by the customer. The two interim reports were to have been merely progressive drafts, or "in progress" versions of the final report. These interim reports were included in the contract to facilitate partial payment under this fixed price contract. The contractor, in fact, chose not to bill until the final report was accepted; thus, the government suffered no harm. We believe for the reasons set forth above that the contract payment was proper and in the best interests of the government.

f. THE CONTRACTING OFFICER FOR CONTRACT MDA903-86-C-0062 TO REVIEW CONTRACT PERFORMANCE FOR CONSIDERATION OF A REDUCTION IN FEE FOR DELINQUENT DELIVERY AND DISALLOWANCE OF COSTS FOR A CONSULTANT NOT AUTHORIZED ON THE CONTRACT.

The contracting officer has reviewed the contract and does not concur in a reduction in contract amount for late delivery. The final report was prepared on time, but the contractor was instructed by the alternate COR to defer release of the report, presumably pending further developments in the area of study which could be incorporated into the final report to make it more meaningful and current. Unfortunately, the final report, as delivered late, was not materially different from the text which was prepared on time. The contracting officer believes that this late delivery was government caused and notwithstanding the lack of communication between the contractor, contracting officer, and COR relative to the delivery, the contractor should not be penalized. The contracting officer does concur that the

government should disallow the unapproved subcontract (consultant) costs. Preliminary discussions on this issue with the ACO have determined that DCASMA will issue the contracting officer's "Final Decision".

g. THE CONTRACTING OFFICER FOR CONTRACT MDA903-86-C-0158 TO DETERMINE IF PAYMENTS ON THE CONTRACT WERE COMMENSURATE WITH THE WORK PERFORMED AND DISALLOW ALL INAPPROPRIATE BILLINGS.

Contract No. MDA903-86-C-0158 was a cost-reimbursement, research/study contract in which the contractor was required to provide his best efforts to accomplish the statement of work. The COR has informed the contracting officer that the contractor did submit two papers and conducted a briefing at NAVAIR with DoD representatives present. The government derived benefit from these items and a final report summarizing results obtained has been delivered and accepted. Accordingly, the government is satisfied that value has been received commensurate with the costs incurred. Specific elements of cost will be reviewed during final audit to assure that they were properly allowable and allocable.

DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(SHIPBUILDING AND LOGISTICS)
WASHINGTON DC 20360-5000

MAY 19 1988

MEMORANDUM FOR THE DEPARTMENT OF DEFENSE ASSISTANT INSPECTOR GENERAL FOR AUDITING

Subj: DRAFT REPORT ON AUDIT OF SOLE SOURCE PROCUREMENTS RESULTING FROM UNSOLICITED PROPOSALS (7AP-026)

This is in response to your memorandum of 30 March 1988, which forwarded the subject draft report for Navy review and comment.

We have complied with recommendations A(1 - 3) and B(1 - 3), by issuing memoranda to our activities emphasizing the management of unsolicited proposals and contracting officer's representatives (CORs) (TAB A). Recommendation B(2) assigns responsibility to the Naval Air Systems Command (NAVAIR) for a Naval Surface Weapons Center (NSWC) COR. Since the Space and Naval Warfare Systems Command has cognizance over the NSWC, we have addressed our letter on COR management to them instead of NAVAIR.

If there are any questions or comments, please contact Bruce Lowrey on my staff at (202) 692-8657.

Everett Pyatt

EVERETT PYATT
ASSISTANT SECRETARY OF THE NAVY
(SHIPBUILDING AND LOGISTICS)

Copy to:
NAVINSGEN
NCB-53

TAB A - Memos to Navy Activities



APPPENDIX J
Page 1 of 4
MAY 23 1988

DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(SHIPBUILDING AND LOGISTICS)
WASHINGTON DC 20360 5000

MAY 6 903

MEMORANDUM FOR DISTRIBUTION

Subj: DRAFT REPORT ON AUDIT OF SOLE SOURCE PROCUREMENTS RESULTING FROM UNSOLICITED PROPOSALS (7AP-026)

Ref: (a) Federal Acquisition Regulation Sub-part 15.5
(b) Federal Acquisition Regulation Sub-part 43.102
(c) SECNAV Instruction 4205.[illegible] dated 18 April 1988

A recent Department of Defense Inspector General (DoDIG) audit report (7AP-026) cited weaknesses in our management of unsolicited proposals and contracting officer's representatives (COR's). We would like to re-emphasize several key points on these topics:

o In accordance with references (a) through (c), contracting officials should:

oo return unsolicited proposals if they are not innovative.

oo conduct thorough market research prior to making sole source determinations on unsolicited proposals. "Sources sought" synopses in the Commerce Business Daily are recommended.

oo challenge sole source determinations based on inadequate market research.

oo conduct market searches without disclosing unique or innovative ideas in the unsolicited proposals.

oo advise COR's to comply with their appointment letters and avoid directing actions outside the scope of the contract.

oo ensure COR appointment letters contain adequate PCO notification guidance.

If there are any questions, please address them to Bruce Lowrey at 692-8657.

APPENDIX J
Page 2 of 4

74

E. Hammack

ERNEST G. CALHACK
Director
[illegible]

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DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(SHIPBUILDING AND LOGISTICS)
WASHINGTON DC 20360 5000

MAY 6 '88

MEMORANDUM FOR COMMANDER SPACE AND NAVAL WARFARE SYSTEMS COMMAND
(12)

Subj: DRAFT REPORT ON AUDIT OF SOLE SOURCE PROCUREMENTS RESULTING FROM UNSOLICITED PROPOSALS (7AP-026)

Ref: (a) Federal Acquisition Regulation Sub-part 43.102

Encl: (1) DoD AIG(A) draft report (7AP-026) dated 30 March 1988
(2) SECNAV Instruction 4205.1 dated 18 April 1988

Enclosure (1) cited problems with a Naval Surface Weapons Center (NSWC) COR's management of Defense Supply Service contract MDA903-86-C-0158. The COR may not have properly monitored and responded to contractor performance and delivery problems. Also, the COR's appointment letter may have lacked adequate PCO notification guidance.

In accordance with reference (a) and enclosure (2), please emphasize to your CORs the importance of complying with their appointment letters. Any contract problems, delays or proposed changes should be immediately referred to the contracting officer. In addition, COR appointment letters should include adequate PCO notification guidance.

If there are any questions, please address them to Bruce Lowrey at 692-8657.

E. G. Cammack

ERNEST G. CAMMACK
Director
Contracts & Business Management

DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(SHIPBUILDING AND LOGISTICS)
WASHINGTON DC 20360 5000

MAY 5 1988

MEMORANDUM FOR THE ASSISTANT SECRETARY OF THE NAVY (SHIPBUILDING AND LOGISTICS)

Subj: DRAFT REPORT ON AUDIT OF SOLE SOURCE PROCUREMENTS RESULTING FROM UNSOLICITED PROPOSALS (7AP-026)

On 30 March 1988, the DoD IG issued a Draft Audit Report on unsolicited proposals and contracting officer's representatives (CORs) (TAB A).

The IG found that several sole source contracts awarded by SPAWAR and ONR based on unsolicited proposals could have been competed if adequate market searches had been conducted. They also suggested that we emphasize the responsibilities of the COR to our activities based on a Naval Surface Weapons Center (White Oak) COR's mismanagement of a Defense Supply Service contract. SPAWAR has cognizance over the NSWC.

We have forwarded memos on these issues to our activities. They are included in our response to the IG at TAB B.

Recommend you sign the memorandum at TAB B.

V Resp
J Kamrad

[illegible] C. CALLAHAN
[illegible]
[illegible] & Business Management

DEPARTMENT OF THE AIR FORCE
WASHINGTON DC 20330-1000

OFFICE OF THE ASSISTANT SECRETARY

JUN 8 1988

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FOR AUDITING
OFFICE OF THE INSPECTOR GENERAL
DEPARTMENT OF DEFENSE

SUBJECT: DOD(IG) Draft Report on the Audit of Sole Source Procurements Resulting from Unsolicited Proposals (Project No. 7AP-026)

This is in reply to your memorandum for Comptroller of the Air Force requesting comment on the findings and recommendations made in subject report.

Of the 66 sole source contracts reviewed from January 1987 through January 1988, 16 were from the Air Force. Of the 17 invalid proposals found, none were from the Air Force.

The findings and recommendations with regard to invalid unsolicited proposals and poor contract administration do not evolve from the 16 Air Force proposals that were reviewed.

Nevertheless, we concur with the recommendations which call for a reemphasis on the innovative and unique requirements of unsolicited proposals and the need to provide guidance on making an adequate market search before accepting a sole source justification.

DANIEL S. RAK
Deputy Assistant Secretary
(Acquisition Management & Policy)

DEFENSE LOGISTICS AGENCY
HEADQUARTERS
CAMERON STATION
ALEXANDRIA, VIRGINIA 22304-6100

REPLY REFER TO DLA-C

27 MAY 1988

MEMORANDUM FOR THE ASSISTANT INSPECTOR GENERAL FOR AUDITING, DEPARTMENT OF DEFENSE

SUBJECT: Draft Report on the Audit of Sole-Source Procurements Resulting from Unsolicited Proposals (Project No. 7AP-026)

In the draft report dated 30 Mar 88, no findings or recommendations were directed to the Defense Logistics Agency, therefore, we have no comments on the report.

FOR THE DIRECTOR:

Debra K. Connelly

DEBRA K. CONNELLY
Acting Chief
Internal Review Division
Office of Comptroller

## ACTIVITIES VISITED

Office of the Secretary of Defense

Assistant Secretary of Defense (Production and Logistics), Washington, DC

Department of the Army

U.S. Army Materiel Command, Alexandria, VA
U.S. Army Missile Command, Redstone Arsenal, AL*
Defense Supply Service - Washington, Washington, DC*
U.S. Army Aviation Systems Command, St. Louis, MO*

Department of the Navy

Office of Naval Research, Arlington, VA*
Space and Naval Warfare Systems Command, Arlington, VA*
Navy Regional Finance Center, Arlington, VA

Department of the Air Force

Air Force Systems Command, Andrews Air Force Base, MD
Armament Division, Eglin Air Force Base, FL*

Defense Logistics Agency

Headquarters, Defense Logistics Agency, Alexandria, VA

* Denotes procurement offices where contracts were reviewed.

## FINAL REPORT DISTRIBUTION

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Deputy Assistant Secretary of Defense (Administration)

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Department of the Navy

Director, Naval Audit Service

Department of the Air Force

Auditor General, Air Force Audit Agency

Other DoD Activities

Director, Joint Staff, Joint Chiefs of Staff
Director, Defense Advanced Research Projects Agency
Director, Washington Headquarters Services
Defense Contract Audit Agency
Defense Logistics Studies Information Exchange
Industrial College of the Armed Forces

Non-DoD Activities

Office of Management and Budget

Congressional Committees:

Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Governmental Affairs
Senate Subcommittee on Federal Service, Post Office and Civil Service, Governmental Affairs Committee
Senate Ranking Minority Member, Committee on Armed Services
House Committee on Appropriations
House Subcommittee on Defense, Committee on Appropriations
House Ranking Minority Member, Committee on Appropriations
House Committee on Armed Services
House Committee on Government Operations
House Subcommittee on Legislation and National Security, Committee on Government Operations



88-975 (224)